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Pacific Railroad Legislation.

1862–1885.

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PACIFIC RAILROAD LEGISLATION,

1862–1885.

ORIGIN OF THE ENTERPRISE.

THE project of a railroad to the Pacific coast was first brought to the attention of Congress in 1846, by Asa Whitney of New York, in a memorial asking government aid for the building of a road from the shore of Lake Michigan to Portland, Ore. Mr. Whitney's proposition was in the form of a grant of lands on both sides of the proposed road. It was discussed in committee and in Congress; but the general opinion was that it was chimerical, and that Mr. Whitney was a visionary enthusiast. His persistent efforts met with no reward beyond the respectful consideration of committees, and vague and aimless debates in Congress. But the acquisition of new Pacific-coast possessions and the discovery of gold in California gave the scheme a new interest; so that from 1848 until 1860 Congress addressed itself at various times to the serious consideration of the subject.

So soon as its practicability was admitted, the question of routes was raised; and to the difficulty of interesting the people and the Government in a scheme involving such an immense expenditure, there was added that of harmonizing the conflicting views on this point, which were largely influenced by sectional and political considerations. Three routes were considered and discussed, which may be described as the Northern, Central, and Southern; and the advocates of the scheme were so divided between the three, that none secured the approval of Congress.

It continued to be a prominent topic of discussion; and

public interest in it became so general, that the national conventions of both parties in 1860 adopted resolutions in favor of granting government aid to the enterprise. Events immediately following the election in 1860 forbade the consideration, at that time, of any scheme looking to so large an expenditure of public money, or the partnership of the Government in any such undertaking. Very soon after the opening of the war, however, the necessity for closer connections, and greater facilities for intercourse, with the States of the Pacific coast, pressed itself upon the attention of the Government and of Congress.

In 1862 Congress passed the first Act of Incorporation, in which incorporators were named, a plan of organization laid down, the line of the road indicated, and a liberal subsidy and land-grant offered.

The necessity for building the road was now urgent. At a time when the attention of Congress was so occupied with measures for the prosecution of the war as to exclude almost every other subject, this matter was deemed of such importance as to occupy a large share of the debates. It had ceased to be regarded as a scheme for individual profit or aggrandizement; had completely lost its character as a business enterprise, and assumed the relation of a war measure. The question now was, not whether capital and enterprise should receive the encouragement and support of the Government in projecting a great work of a semi-national character, but whether the Government, in its hour of need, could successfully command the aid of its citizens in the prosecution of a national undertaking.

The provisions of the Act of 1862, generous as they seemed, were not liberal enough to induce the investment of capital sufficient for the purpose. The efforts made under it, although earnest and persistent, were insufficient to do more than launch the enterprise. Very little progress had been made upon it when work practically ceased, and the whole business was at a standstill.

The Act of 1864 doubled the land-grant, made one-half the

compensation for government transportation payable in cash, and permitted the issue of first-mortgage bonds equal in amount to the subsidy debt, with a priority of lien over the Government claim. Under these inducements, additional capital was invested; and from that time the work proceeded to its final completion with marvellous rapidity and no more than the usual discouragements attending all great enterprises.

Some knowledge of the circumstances under which the charter was granted in 1862, and amended in 1864, and of the original relations between the Government and the company, is necessary to a proper understanding of existing complications, and the antecedent conditions of which they are the result.

The Act of 1862 was in its essence a war measure. It was so regarded in all the discussions that took place upon it in the Senate and House, and it was from this view of it that Mr. Lincoln took so profound an interest in its passage. We are liable to go very wide of the mark in our judgments if, in construing its meaning and defining its scope, we do not bear constantly in mind the fact that it was thus essentially a war measure.

The Government required a railroad across the continent. The necessity grew out of the conditions of 1862–64, and was urgent, — imperative. For obvious reasons, not least of which was the question of its power under the Constitution to engage in any such enterprise, the Government could not on its own account undertake it. The debates in Congress made no question of the urgent military necessity which was so manifest as to be admitted on all sides, but related almost entirely to the question of means, — what was the least inducement, the lowest price, at which the requisite capital and business energy could be persuaded to undertake the venture? The course of the discussion in the two Houses of Congress shows better than any thing else the peculiar conditions under which the original charter was granted, and the actual intent of the legislators who framed it. Without

a somewhat careful perusal of those debates, it is hardly possible to give the subject intelligent treatment.

Those who have closely followed the course of events will probably admit that it is not stating the case too strongly to say, that in the later discussions, which have filled columns of the daily press, and pages of the "Congressional Record" during the past ten or twelve years, there has been a disposition to treat the company, not merely as a debtor to the Government, but as a disreputable and dishonest debtor; one who, taking advantage of national necessities, had, through a sort of confidence game, secured enormous grants and concessions, for which he now not only refused to pay the paltry consideration agreed upon, but even resisted the decrees of courts, and defied the power of Congress. All the conditions that attended the long travail through which the enterprise came into being, are ignored or forgotten.

When editorial writers and public speakers say that it is absurd to suppose that any Congress, after endowing this company with a land-grant of imperial proportions, and aiding it further by the issue of millions of government bonds as a subsidy loan, could have seriously intended to let this loan accumulate to the date of its maturity with no provision to meet the accruing interest except such as resulted from the application of one-half the compensation for government transportation, and five per cent of the net earnings, they are simply applying the reasoning natural to existing conditions to an entirely different set of surroundings in the past. What would be a prodigal waste of resources, criminal extravagance and idiotic lack of foresight to-day, or at any time since the dawn of peace changed all the outlook, and the completion of this enterprise effected the revolution in material conditions that followed it, — was wise and prudent investment and far-seeing statesmanship at the time when the country was paying three millions a day in the prosecution of the war; when its coasts were thirty days distant from each other, with a thousand miles of intervening barren wastes and mountain barriers, the simple item of govern-

ment transportation across which mounted up among the millions every year.

It was under the pressure of urgent necessity that the Thirty-seventh Congress passed the Act of Incorporation of 1862. The extent of the inducement to be held out to capitalists to embark in the enterprise was carefully considered; and that the endowment offered was not extravagant in view of the magnitude of the project and the obstacles in its way, is sufficiently evidenced by the fact that capital gave no ear to it as an investment for profit, and the most daring speculators of that speculative period shrank from it as a visionary venture big with nothing but failure. At the first meeting of the corporation at Chicago, in July, 1862, resolutions were adopted in which stress was chiefly laid upon the necessity of the work as a war measure; and a committee of one from each State and Territory, not engaged in rebellion, was appointed to solicit subscriptions to the capital stock. Books were opened in all the principal cities of the northern States, and the fact was extensively advertised; but the whole amount of subscriptions reached only the pitiful sum of $2,200.

The next step taken was the appointment of a committee of the corporators to solicit from Congress additional and more favorable legislation. At the same time the officers of the newly organized company began a personal canvass, for the purpose of raising the amount necessary to save the charter from being lost by lapse of time. Their labors resulted in subscriptions to the amount of $2,000,000, the motive for most, if not all, of which, was the sentiment of patriotism alone; and on the 29th of October, 1863, a permanent organization was effected.

The application to Congress for additional legislation was promptly answered; and on the 2d of July, 1864, the bill embodying the desired amendments became a law. By this bill, the land-grant was doubled in amount; the company was authorized to issue its first-mortgage bonds to an amount equal to the government subsidy, which was made a second mortgage; and the provision relating to the application of

government-transportation accounts to the payment of the debt was so amended, that, instead of the whole amount, only one-half should be so applied, the other half to be paid the company in cash. Other changes of greater or less importance were made; but these were the points wherein the bounty of the Government was enlarged, in order to insure the immediate success of the enterprise.

THE INTENTION OF CONGRESS.

The debates attending the progress of the original measure of 1862, and the amended Act of 1864, were thorough and exhaustive in both Houses of Congress. Whatever obscurities and ambiguities of phraseology in these enactments the keen eye of the politician or the lawyer may since have developed, there was nothing obscure or ambiguous in the intention of their authors, as gathered from the debates. All points were covered. Congress knew what it wanted, and how much it wanted it. It was prepared to extend government aid to the enterprise in just such measure as was necessary to insure that the work should be done. It proceeded tentatively. Its first offer failing to enlist the requisite capital, after full discussion and investigation it made the second and larger bid.

What, then, was the real intent of the framers of this charter?

The question concerns us, not merely in its historical interest, but because upon the understanding of that intent which then prevailed, and concerning which there was neither dispute nor doubt, engagements were entered into, contracts executed, investments made, obligations incurred, and rights established, entailing relations with which the Government in one form and another has constantly to deal. The legislators of the Thirty-seventh and Thirty-eighth Congresses were neither fools nor profligates. History attests the wisdom and sagacity of their legislation during a period of unexampled difficulty and trial. Nor has it ever been pretended that the shadow of a corrupt motive actuated a single one of the supporters of this measure. In the endeavor to reach

their real purpose, we have only to restore the conditions under which they acted.

It has been somewhat the fashion of late years to descant upon the land-grant which they made one of the inducements to the enterprise, as an enormous waste of the nation's possessions, a reckless squandering of an imperial domain upon a gang of speculators. With a railroad spanning its whole extent, and a large portion of its vast area inhabited, — brought under cultivation, sprinkled over with cities, towns, and villages, as seen to-day, — it does look like an enormous bounty. But *was* it excessive? Viewed in the light of twenty years ago, when it was all an uninhabited waste, untouched by plough or spade, ranged over by the Indian and the buffalo, with civilization halting at its edge daring to go no farther, and serving no purpose except as the breeding-ground of Indian wars and a barrier between the Atlantic and Pacific States, — was it reckless prodigality? Did it seem then a squandering of fertile acres, to make over a part of what had no value, to further an enterprise which should give value to the remainder? Without the railroad and the conditions which it has created, the whole would be worthless to-day. The obvious reply to this line of argument will be, of course, that ere now somebody else would have built the road if the original companies had not built it. Quite likely. The great admiral left on record an answer to all such depreciatory comment on great pioneer enterprises. It was easy for each carping Spanish courtier to see how an egg could be made to stand on end, when Columbus had once taught him the trick.

If ever Government engaged in a business transaction with practical sagacity and foresight and shrewd business sense, it was in this trade, by which the United States gave value to its own waste lands, and brought them into market. The shrewd private land speculator did exactly the same thing then, — and he habitually does it now. He will continue to do it so long as he remains shrewd, and so long as costly avenues of communication increase the value of adjacent

possessions. If he does not do it, the law will compel him to do it. The whole system of betterments rests upon a recognition of this fact. When the Pacific railroads were built, the Government paid a betterment on the property it held adjoining the railroad. It did what private property holders in cities are habitually compelled to do, and what land-holders in undeveloped regions habitually do of their own accord; and for the same reasons. The transaction was one advantageous and profitable to it.

During the last fifteen years much has been said and written, and not without vehemence and indignation, about the munificence of the Government in loaning the company its credit, and issuing its bonds to the amount (consolidated company, Union Pacific and Kansas Pacific) of $33,539,512, and consenting to take a second mortgage for the security of its loan. Nor has the public been unfamiliar with highly wrought pictures of the suffering poor, whose lands have been wrested from them, while over against them stood the grasping and greedy corporation, obstinately refusing to pay the interest on its debt to the Government, — nay! even bringing litigious suits against the benefactor it had cajoled and cheated, and contumaciously refusing obedience to the decrees of courts and the requirements of Congress.

Let us consider these complaints for a moment. Did Congress know what it was about when it voted this loan, and subordinated the security? What was its understanding concerning interest payments? Has Government been cheated or deceived? Or is its good-nature being imposed upon by the recipients of its bounty?

Was this an unreasonably large loan? It was $23,500 to the mile. That amount secured by first mortgage, even with the postponement of interest payments to the maturity of the debt, was not sufficient, added to the land-grant, to tempt capital to invest in the enterprise. It was subordinated to a first mortgage for an equal amount. Under the circumstances of the time and the conditions of construction, — state of the currency, and high price of labor and materials, — there seems

to be nothing to warrant the outcry against the reckless extravagance of these advances.

But it is said, that under the claim that the interest is not to be paid as it accrues, but at the maturity of the debt, the indebtedness of the company to the Government when the debt matures would be about $94,000,000, — an enormous sum, the very magnitude of which is a refutation of the claim that Congress could for a moment have harbored any such purpose.

To this there is, of course, a sufficient and conclusive answer in the fact that the Supreme Court has decided the question; and that its unanimous judgment is, that, by the terms of the Act of Incorporation, the interest is not due nor payable until the maturity of the debt.[1]

It only remains to answer the intimation that this is due to technical defects in the bill, that it could not have been the intention of Congress to bind the Government to any such terms. Those who indulge in these intimations dwell at the same time upon the munificence of the Government in its dealings with the company. That munificence, be it always remembered, was limited to bestowing a grant of lands costing nothing, and, as they stood, worth nothing, in order to make valuable, and bring into market, a vast area of remaining lands, its own property, which were otherwise unmarketable and worthless. That was "business," not bounty. Or would it have been "munificent" for the Government to loan its credit by issuing bonds upon ample security, the interest of which should be regularly paid by the borrower as it accrued, and the principal at maturity? Small risk here, with no cash outlay, and enormous advantages gained! "Smart," perhaps, it would have been, if the thing could have been done with that understanding, but not "munificent."

No, it was not the purpose to require interest payments as they accrued. The whole course of the discussion in Con-

1 *United States* vs. *Union Pacific R.R. Co.* (91 U. S. Reports, 72.)

gress shows this; and, if any doubt remained, it would be dispelled by the fact that an amendment including this specific requirement was actually offered, and was emphatically voted down.

The amendment was offered by Mr. White of Indiana, who said, —

"It will be observed, by reference to the section, that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following: —

"'It is declared to be the true intent and meaning of this section, that the current interest on said bonds shall be chargeable to said company, to be by them reimbursed to the United States within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said company to the same liability and forfeiture above provided for in case of the non-redemption of the bonds at their maturity.'

"The section," said he, "as it now stands, makes no provision for the payment of the current interest as it accrues semi-annually. It may, or may not, have been the intention of the committee, that the interest should be paid by the company. Probably it was; but, if not, then this amendment, of course, will involve a principle which the committee have not sanctioned. If it was the intention of the committee, — and it is the intention of the committee of the whole, — that the railroad company shall pay the current interest, then to avoid the difficulty and uncertainty which creditors will have, and to insure its prompt payment by the United States, this amendment provides that the Government shall first pay it, and the company reimburse it to the United States within one month. Of course, it will be a little gain to the company to the extent of the interest upon the interest. This is the only way the interest can be promptly secured to the creditors."

Mr. Campbell, chairman of the Railroad Committee, in reply, said, "It is not supposed that in the first instance the company will reimburse the interest to the Government: it

will reimburse it in transportation; but, if the transportation does not meet the interest, then the Government is to have a mortgage upon the entire road, for the full amount of both principal and interest."

The amendment of Mr. White was rejected.

On another occasion, Mr. White said (see "Congressional Globe," Thirty-sixth Congress, p. 1891),—

"I will take this opportunity to say, that it is very true that this bill does provide for the repayment of these advances by the Government. The gentleman from California lays stress on his objection, especially upon the fact; and for that reason he objects to providing for government directors. Now, sir, I contend, that, although this bill provides for the repayment of the money advanced by the Government, it is not expected that a cent of the money will ever be repaid. If the committee intended that it should be repaid, they would have required it to be paid out of the gross earnings of the road,—as is done with the roads in Missouri, Iowa, and other States,—and not the net earnings. There is not, perhaps, one company in a hundred, where the roads are most prosperous, that has any net at all. I undertake to say that not a cent of these advances will ever be repaid, nor do I think it desirable that they should be repaid. This road is to be the highway of the nation, and we ought to take care that the rates provided should be moderate. I think, therefore, that this will turn out a mere bonus to the Pacific Railroad, as it ought to be. The Government, then, ought to be considered as having an interest in the road, and should have a voice in the management of its affairs."

WAS CONGRESS RECKLESS OR IMPROVIDENT?

This point being settled,—that Congress knew what it was about; that the determination to postpone the interest payments, except as specifically provided in the bill, until the maturity of the debt, was deliberately reached; and that this conclusion is not due to the wrong construction of loose phraseology,—much has been said of the recklessness and

profligacy of a Congress which deliberately made over nearly a hundred million of money to a ring of greedy speculators; for, it is urged, the road at the expiration of thirty years will not be worth the amount of the first mortgage, and the Government will consequently lose the whole debt then due to it.

Let us consider whether, even should this occur, Congress was, after all, so reckless and improvident.

In the first place, it is not true that the interest payments are all postponed till the maturity of the debt. The application to this purpose of one-half the compensation for government transportation, and 5 per cent of the net earnings under the Act of 1864, has counted for something in the reduction of the interest, though insufficient to meet it as it accrued. But a very important fact to be considered in this connection, is the amount of money saved to the Government in its transportation accounts by the building of the road. The charter was a war measure. Its chief purpose was the building of a road for the transportation of mails, troops, war material and supplies. Has that purpose been accomplished? Has the Government got what it paid for?

In an article on the subject in "The North-American Review" of June, 1879, Mr. Henry V. Poor, than whom the Union Pacific has of late years had no more persistent and malignant critic, says, "According to the report of the Secretary of War, made under date of March, 1862, the average cost to the Government for the five years previous, of transporting the mails, troops, and munitions of war, between the Atlantic and Pacific coasts and intermediate points, averaged $7,309,341 annually. The route for the mails was by way of Panama and Nicaragua through foreign states: the time required for their transmission between New York and San Francisco averaged forty days." With these figures before it, was it at all strange that Congress should make a loan, and issue its bonds, at 6 per cent to the Union and Central Pacific companies, to an aggregate amount of $60,000,000, postponing interest payments till the maturity of the debt, save as they were met by one-half the trans-

portation accounts, and the 5 per cent net earnings? The annual interest in round numbers was $3,600,000. From all the data at hand, Congress had reason to believe that one-half the transportation accounts, $3,650,000, would extinguish the interest. Or, if the diminution in cost of transportation should reduce these figures, the result was practically the same, since just so much saving had been effected. This was not profligacy or recklessness. On the contrary, it was sound business sense.

In the day of its distress, the Government said, "We are paying over $7,000,000 annually for transportation to the Pacific coast by routes that involve great risk and continued delays. Meanwhile a vast stretch of country lies undeveloped and uninhabited between the Missouri River and the Pacific Ocean, serving only as a barrier between the Atlantic and Pacific States. To any association of citizens who will build us a railroad across this waste, we offer, first, half the lands brought into market by the enterprise, and, second, our credit in the form of thirty-year 6 per cent bonds to the amount of $60,000,000, secured by a lien on the property subordinate to a first-mortgage lien of the same amount. The interest on the loan will be met by the application of one-half our transportation accounts thereto; any excess, and 5 per cent of the net earnings, being appropriated to a sinking-fund for the extinguishment of the principal."

The offer was accepted, and the road built. The building of the road immediately reduced the cost of transportation to figures that seem insignificant in comparison with the accounts of previous years; and the Post-office Department, instead of paying for mail-carriage in accordance with the contract in the charter, made its own price. Half-transportation, reduced postal payments, and 5 per cent net earnings, failed to meet the annual interest accounts, whereupon an immediate revision of the agreement, to the further advantage of the Government, was demanded.

Yet the Government had lost nothing. On the contrary, no matter how profitable the Union Pacific may have been

to those engaged in the immediate work of building it, their gain was small compared to the gain of the Government. Indeed, while it is rarely given to private parties to make an investment so remunerative to them as the investment of the United States in the Union Pacific road was to it, such an experience is unique with governments. Not only did the Union Pacific bring vast tracts of public lands into the market, not only did it save millions annually in the cost of carrying mail-matter and supplies, — not only were these profits and economies, already referred to, effected, but, large as they were, they were trifling compared with the saving of blood and treasure effected elsewhere. The Union Pacific settled the Indian question. How costly and how indecisive its endless frontier wars once were, the country is rapidly forgetting. That it is permitted to forget, is due to the construction of the railroad, which moved men, munitions and supplies with a rapidity before unknown. The fountain of the troubles was thus dried up at its source. As a mere business, money-making operation, therefore, the United States, least of all parties concerned in it, had any good ground on which to complain of the results of its participation in this railroad venture. Never before in its history was it concerned in so paying an operation. On every dollar invested, it year by year received its interest three and four fold. All it hoped to get was returned to it. Under such circumstances, what private party to a business venture would ever have thought of assuming the part of an injured and defrauded benefactor? That the venture had been most remunerative to him, the benefactor could not deny; — but the other party also had made money! Yet, as a rule, in government dealings, it is "the other party" only who makes money. In this respect, the building of the Union Pacific was exceptional.

It was, then, the indisputable intent of Congress, in granting the charter, to postpone the payment of interest on the subsidy bonds till the maturity of the debt. It is somewhat important to keep this fact in remembrance, as the company's insistence thereon was the beginning of the litigation in

which it has been so long involved with the Government. A vast amount of misunderstanding and prejudice will be removed from the public mind when the exact truth concerning this matter is fully apprehended.

THE CHANGE IN PUBLIC SENTIMENT.

It is not proposed in this place to go into the history in detail of the building of the road. We are not now concerned with the motives of the men who constructed it, their methods or plans, or the profits they derived from it. It is notorious that the legitimacy of their methods has been called in question; that instead of being, as was originally supposed, a venture attended with serious risks, it was from the first safe and profitable, with enormous profits accruing to the projectors. The public disappointment was profound. It is a peculiarity of human nature, that, while those who assume great risks in embarking upon large enterprises are enthusiastically applauded so long as failure or loss seems imminent, the return of profits commensurate with the risk changes the whole aspect of the case: the public benefactor becomes in a twinkling an impostor and a fraud.

Condemnation of the Credit-Mobilier methods was not unjust. The effect of the discussion upon the public conscience may have been salutary. None the less, it is certain that the angry feeling towards the pioneer company and the holders of its stock and bonds then engendered, has had the effect to inspire unfavorable action by the departments and hostile legislation by Congress, leading to vexatious and costly litigation, seriously embarrassing the corporation, with no compensating benefit to the Government.

The first effect of the change in public sentiment, following the discovery that large profits had been derived from the Union Pacific construction, was in April, 1869, when, under a resolution of Congress, a Commission of five "eminent citizens" was appointed to examine and report upon the condition of the road, then very near completion, and what amount of money would be necessary to its completion in

accordance with the terms of the charter. This action was taken in consequence of reports extensively circulated, that the road had been cheaply built in an inferior manner and over circuitous routes, in order to obtain the government subsidy.

The Commission reported in October of the same year, recommending specific expenditures to the amount of $1,586,100, to bring the road up to the standard of a "first-class railroad." A subsequent Commission, appointed to examine and report whether the deficiencies pointed out by the former Commission had been supplied, reported in October, 1874, that the company had expended $2,215,975.79 in excess of the recommendations, that all the requirements of the law had been complied with, and that the road was a "first-class railroad."

These facts are cited here, simply to show that the affairs of the company began to be subjected to the most rigid scrutiny at a point of time antedating the completion of its road. That rigid scrutiny has never been relaxed or interrupted since. It may be stated as an interesting circumstance in this connection, that in July, 1876, Congress, by resolution, requested the Secretary of War to have made a careful survey of the road, for the purpose of discovering whether the distance corresponded with the number of bonds issued. The officer of the Engineer Corps of the army, to whom the survey was intrusted, reported in January, 1877, that the total length of the road exceeded by a fraction over a mile the distance shown by the original measurements for which bonds had been issued.

Pursuing the line of policy foreshadowed by the appointment of the Commission of eminent citizens, the Secretary of the Interior suspended the issuance of land-grant patents to the company until that or some other commission should report that the road was complete, and all the requirements of the law for a first-class railroad were fulfilled. This order remained in force until the report of the second Commission in October, 1874, that the road was "completed" in the fullest sense of the charter requirement.

In a spirit of retaliation, perhaps not unnatural under the circumstances, the company stood upon the technicality suggested by this order, and declined to pay into the Treasury the 5 per cent of net earnings required by the charter, on the ground that the road was not "completed" until its acceptance by the Government upon the report of the second Commission. Suit being brought to enforce the government claim, it was decided against the company, the court ruling that the road was completed Nov. 6, 1869.

On the 13th of September, 1870, the question of interest payments was first raised, by a demand on the company from the Treasury Department for arrears of accrued interest on the subsidy bonds issued by the Government. The company, by its proper officer, returned answer, declining to comply with the demand, and referring to the terms of the charter in proof of the fact that the interest was not due until the maturity of the bonds. The question being referred to the Department of Justice, Attorney-Gen. Akerman gave an elaborate opinion, sustaining the view of the Treasury Department that the Government might lawfully claim from the company the amount of interest in question, so soon as payment of the same had been made by the Government. In further answer to an inquiry from the Treasury Department, he gave it as his opinion, that the Government could "retain the entire amount of compensation for services rendered to it by the company, applying the same to the interest paid by the United States, unless such interest shall have been repaid by the company; and, in that event, one-half of the compensation for such services may be reserved, and applied to the principal of the bonds."

This opinion was a remarkable one. Yet there can be no doubt that the serious trifling with charter rights and express statute provisions which distinguished it, was in accordance with the current of public opinion at the time, and answered in a sense the popular demand. Even so soon as this, — scarcely a twelve-month after "the driving of the last spike" on the shores of the Salt Lake, — people had forgotten every

thing about the original transaction, except that somebody had made money out of it, and that it was generally believed the Government had been defrauded. The necessities of the Government during the war; the repeated unsuccessful efforts to induce capitalists to undertake the enterprise; the amount of money actually and directly saved to the Treasury by it; the seemingly insuperable obstacles, physical and financial, encountered and overcome, — were as though they had never been.

The single concrete fact popularly grasped, was that the Government was paying interest on bonds issued for the exclusive benefit of these corporations, while the corporations refused even to allow their charges against the Government to be applied as a set-off against such payments. The average voter has little time to listen to explanations of complicated transactions, and less for the reading of history. He uses short logical processes. In the present case, he said, "Here is a loan made on mortgage. It is the debtor's place to pay the interest as it accrues." It was not an easy thing for a corporation which had the reputation of having made large sums out of its transactions with the Government, to make head against this line of argument, or even get its chartered rights considered. It had, or was believed to have, a vast amount of ill-gotten money. The average voter had a club. These are conditions which do not conduce to lengthy hearings or just judgments. With such a state of feeling existing, not even the Supreme Court being exempt from scandalous imputation, it hardly need be said that few men in Congress felt called upon to stand up in opposition to measures intended to bring a refractory corporation to terms.

The action of the Treasury Department brought the subject to the attention of Congress; and many measures to secure the interests of the Government in the Pacific railroads were submitted. One of these, after forbidding the payment to the company of any money on account of services, such liability being accounted a set-off against the subsidy debt,

went on to provide that the mortgage securing such debt should be held to cover all the land-grant. But Congress was not ready to pass any measure without first seriously considering the fundamental question, — What rights had been acquired under the charter, and how far could they safely be interfered with? The whole subject was investigated. It was found that the proposed legislation was, to say the least, of doubtful constitutionality. Reporting to the Senate from the Judiciary Committee, under a resolution authorizing an inquiry whether the Secretary of the Treasury had any right to withhold from the company more than one-half the compensation due it for services to the Government, Senator Carpenter said, — "The statute declares in so many words, that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads. It would be bold dealing with the statute, to say that the Secretary of the Treasury may require what an Act of Congress says shall not be required." The committee, he says, "were not called upon to criticise the wisdom of those Acts of Congress (of 1862 and 1864), but to answer as to their true construction; and, in discharging this duty, the committee is obliged to report the law as it is, without regard to what they might desire it to be." So long, he says in conclusion, as the company complies with the charter requirements to keep its road in repair and use, "the Government, if it has not all the security it might desire, has all it ever stipulated for, and has no right to complain."

The outcome of the whole discussion was, singularly enough, the passage of an Act affirming the position of the company, and directing the Secretary of the Treasury to pay over to the company, in cash, one-half the compensation as provided by law.

In March, 1873, the feeling of hostility to the road having been greatly increased by the Credit-Mobilier investigations, a bill, virtually repealing the law of 1871, was passed, by

which the Secretary of the Treasury was directed to withhold all compensation for Government service, and the company was authorized to bring suit in the Court of Claims, with right of appeal to the Supreme Court, for the determination of the respective rights of the company and the Government. This bill included provisions for instituting proceedings in equity against the Credit-Mobilier stockholders, attached heavy penalties to the payment of dividends before the United-States requirements had been complied with, and imposed other restrictions.

The company immediately availed itself of this Act, and suit was brought in the Court of Claims. The court sustained the company's claim, and rendered judgment against the United States for the amount of half compensation which had been withheld. This judgment was confirmed by the Supreme Court in October, 1875; Justice Davis delivering the opinion of the court, to the effect that the law did not intend to impose the obligation to pay current interest, and that the half compensation could not be retained.

The question of interest payments, for resisting which the company had been subjected to so much unmerited criticism, was thus finally settled in its favor.

Meantime the Treasury Department, perhaps under the pressure of public opinion, in its construction of the term "net earnings" in the original Act, decided that interest on the first-mortgage bonds was not a proper deduction from the gross, and insisted upon the payment of the "5 per cent" on that basis. The company refused to accept this decision, or settle upon such basis, whereupon Congress instructed the attorney-general to bring suit against the company for the 5 per cent net earnings. Pending the decision of the Supreme Court, to which the case went upon appeal, the question was definitely settled by the passage of the "Thurman Act," which specifically provides for the deduction of interest paid on the first-mortgage bonds from the gross in ascertaining the net earnings.

POLICY OF SELF-PRESERVATION.

Very early in the history of the company it was foreseen, that, if it was to hold the ground it had already secured, it could not afford to stop with the completion of the original enterprise, and depend for its own profits, and the security of the government debt, upon its business as a great through-line. With two or three other companies chartered, the roads of which were under way across the continent, and other companies with eastern connections reaching out into the new territory the Union Pacific had opened, it required no prophet to foresee, that, in a very short time, not only would the existing monopoly of through-business cease, but the Union Pacific would be obliged to fight for the local business along its own line. It was in obedience to the instinct of self-preservation, that the policy of developing, by a system of branch-lines, the resources of the extensive agricultural, grazing, and mining country traversed by it, was adopted. The work was begun before any payment of dividends to stockholders had been made. Its purpose was, by building up a system, to strengthen the company, and by so much increase the security of the Government. The success that has attended a similar policy on the part of the great railroad corporations of the West, is sufficient evidence of the wisdom of the policy adopted, even if it were not susceptible of proof, as it is by facts and figures, that, except for its branch-line system, the Union Pacific would not be able to-day to meet its fixed charges, to say nothing of the accumulating debt to the Government secured by second mortgage.

But this again was looked upon in many quarters as an improper diversion of moneys, that ought in equity to be applied to interest payments, and served to increase the hostile feeling towards the company.

One other thing was necessary to insure the final success of the enterprise, upon which the eventual payment of the government debt must depend. That was, to put the road into the list of conservative, dividend-paying investments, by

which alone it could be removed from the risk of falling into the hands of reckless speculators, to be tossed about from hand to hand in "the street," to the sacrifice of all its prospective benefits for present and immediate stock-jobbing gain.[1] Dividends to stockholders from the net earnings began to be declared, in pursuance of this policy, in 1875. They were not large, but simply a fair return upon the par value of the stock at about the legal rate of interest, varying from 6 to 7 per cent. This offered an inducement to investors, and was the only way to insure careful and conservative management, in the interest of the owners of the property rather than of speculative holders and greedy wreckers.

Hostile critics did not so view it, but looked upon this also as one more high-handed attempt of the company to evade its proper obligations to the Government, while dividing among its stockholders money that should go into the Treasury. So at each step, Congress and the company drew farther apart. The Forty-ninth Congress has to deal with the results growing out of these continued differences.

THE "THURMAN ACT."

In April, 1878, a provision was inserted in the Army Appropriation Bill, requiring that *all* the transportation charges of the company against the War Department be credited on the interest account, and nothing be paid thereon in cash.

In May following, the "Thurman Act" was passed, which, among other things, clinched this provision of the Appropriation Bill. The main features of this famous act are as follows: —

"Net earnings" are to be ascertained by deducting from the gross earnings, in addition to the necessary expenses actually paid to keep the road in repair, the sum paid in discharge of interest on the first-mortgage bonds.

The whole amount of compensation for services rendered for the Government is to be retained by the United States, one half to be presently applied to the liquidation of present

[1] *See Appendix A.*

and future interest payments, and the other half to be turned into the sinking-fund.

A sinking-fund is to be established, which shall be invested by the Secretary of the Treasury in government bonds, the semi-annual income of which is to be similarly invested.

It was provided, that in addition to the one-half compensation for government services, — the whole amount being divided between interest payments and the sinking-fund, — there should be carried annually to the credit of the sinking-fund the sum of $850,000, or so much thereof as should make, with the compensation for services and the 5 per cent of net earnings called for in the original charter, 25 per cent of the whole net earnings.

The voting of any dividend at a time when the company is in default of sinking-fund payments is made an offence punishable by fine and imprisonment.

The ninth section declares all sums due the United States from the company, whether payable presently or not, "a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States," and also "upon all the estate and property, real, personal, and mixed, assets and income, . . . from whatever source derived, subject to any lawfully prior and paramount mortgage lien or claim thereon."

The purpose of this Act was sufficiently plain. It was a practical nullification of so much of the original charter as postponed the interest payments till the maturity of the debt.

The supporters of the measure did not expect the company to accept it without question. The submission of the "Thurman Act" to the decision of the Supreme Court upon the question of its constitutionality, may fairly be said to have been contemplated by its framers. As was expected, the company resisted its enforcement. A case was made up which presented the single question of the constitutionality of so much of the Act as took from the company the control of its property, and diverted it to a sinking-fund; and thereon the Supreme Court rendered judgment at the October term,

1878. The court, by a bare majority, three of the judges dissenting, held that the Act could be sustained, on the ground that it was "a reasonable regulation of the administration of the affairs of the corporation, and promotive of the interests of the public and the corporation."

So it was settled at last, that, although Congress could not override the charter provision postponing the interest payments, and require the company to pay the interest as it accrued, it could lay hands on just so much of the company's net earnings as it saw fit, and carry them into a sinking-fund. The decision took the ground from under the company's feet. It had rested theretofore in entire confidence upon its chartered rights, believing that the Supreme Court would be a barrier against all attempts to abrogate the original contract. But, under this decision, there was nothing Congress might not do, under guise of regulating the administration of the company's affairs in the interests of the public and the corporation, provided only that such regulation was "reasonable." If Congress might provide a sinking-fund for the payment of interest not due, might it not also provide for the payment in the same manner of the principal? If it could divert to this end 25 per cent of the net earnings, might it not take 55, or 75, or the whole? Who was to declare such regulations unreasonable? Thus the company was worse off in the hands of the benefactor which had lavished bounties upon it, taking only a second-mortgage security, than it ever could have been had it borrowed the same amount of the average Shylock on a first mortgage. The latter would have been obliged to stop with the collection of the interest payments as they fell due, and to be content with his security for payment of the principal at maturity of the debt; for it was so nominated in the bond. But, the Government being one of the two parties, Congress might wipe out all of the original bond except the signatures, and over those signatures write a new bond to suit itself.

The company comprehended the situation, and realized the

futility of further resistance. It was apparently at the mercy of Congress. No further resistance was made to the enforcement of the provisions of the "Thurman Act." Not a penny of the compensation for services rendered the Government by the main line, or any of the branches, has come into the hands of the company since then; and an additional sum, sufficient to bring up the amount to 25 per cent of the net earnings, has been paid into the United States Treasury.

THE "NET EARNINGS" CONTROVERSY.

The decision of the Supreme Court upon the constitutionality of the "Thurman Act" did not embrace or cover all the matters in controversy between the Government and the company. There were still questions concerning the amounts due the company for mail transportation; and, growing out of that dispute, there were differences, of course, concerning what were the "net earnings."

In 1876 the company had given formal notice to the Post-office Department of the amount it should charge the Government for the transportation of the mails, in accordance with the provisions in the charter requiring it to perform this service at rates of compensation not exceeding the amount paid by private parties for the same kind of service. A careful computation had been made on the basis of the compensation received for express service, and due notification was forwarded to the department. The reply of the Postmaster-General was, that, inasmuch as Congress had fixed the rates of compensation to be allowed for the transportation of mails on railroad routes, without making an exception of the Union Pacific, or other roads, the company were "relieved of the necessity of making any such computation for the purpose of determining the amount of mail-pay to which they may be entitled." In accordance with this reply, the Post-office Department established its own rates of compensation for mail service.

Here was a question raised, for the settlement of which an appeal to the courts was necessary; and, pending the de-

cision as to how much the Government owed the company on this account, there could be no ascertainment of "net earnings," nor any computation of the amount due the Government under the 5 per cent clause of the original charter, or the 25 per cent provision of the "Thurman Act."

Under the "Thurman Act," also, the old question of the construction of "net earnings" came up again, through the refusal of the Commissioner of Railroads to allow the deduction of expenditures for new construction and equipment from the gross receipts in ascertaining net earnings.

The whole matter was still further complicated by the consolidation of the Union Pacific and Kansas Pacific companies in 1880, and the raising of the question, whether by the consolidation the 25 per cent requirement was made applicable to the net earnings of the road of the latter company. Upon a question raised by the Kansas Pacific company before the consolidation, it had already been decided, so far as the road of that company was concerned, that the net earnings provision applied only to the subsidized portion, and not to the whole line.

It is not necessary here to go over in detail the several steps in the litigation in which the consolidated Union Pacific company was involved by the rulings of the departments and the legislation of Congress. Under the judgment of the Supreme Court, affirming the constitutionality of the "Thurman Act," the power of Congress over the company had been largely established. For the company, unless new litigation was to be entered upon, there was practically nothing to do but await the action of Congress. Meantime the questions concerning net earnings, and compensation for mail service, remained open, but in process of adjudication.

The differences between the company and the Government growing out of all their complicated relations, were very wide; each insisting, that, under any proper construction of the law, the other was its debtor in a very large amount. In his report for 1884, the Commissioner of Railroads says, "Of the sum of $2,446,557.14 found due in cash from the Union

Pacific Railway Company, under the Act of May 7, 1878, the company has deposited in the Treasury the sum of $778,173.43; the balance of $1,658,383.71 not having been paid, owing to questions in dispute as to what constitutes 'net earnings' under said Act. . . . Upon the recommendation of this office, the whole matter has been referred to the Court of Claims, for a judicial determination of all questions in dispute; and it is expected that the case will be tried at the December term of the court."

Pending this decision, the company was unwilling to pay into the Treasury the amount claimed as due by the Government. That it should pay first, and, if it saw fit, question afterwards, was by many held under the circumstances of the case to be its manifest public duty; and its delinquency was denounced as disobedience of statute requirements, and defiance of law. Additional legislation was proposed, the avowed purpose of which was to bring the refractory corporation to terms. In view of the fact, that legislation already on the Statute Book forbade the refunding to them of money once paid into the Treasury by the Pacific railroad companies, but held it, without interest, to be applied on account, the policy on their part of declining, except under compulsion, to pay disputed accounts until judgment rendered, would hardly seem to have been open to just criticism.

Meanwhile that Congress was unjust in its assumption that the company was disposed to evade payment of its obligations to the Government, was subsequently shown by the promptitude with which, when the judgment of the Court of Claims was announced confirming the company's construction of "net earnings" while adopting the Government view of mail-transportation accounts, payment was made without waiting for the formal entry of judgment. Within two hours of the time that telegraphic notice of the computed amount of the judgment reached the office of the company, the entire sum had been paid into the sub-treasury at Boston and receipt therefor given. And this, too, notwithstanding the company's intention to take an appeal

to the Supreme Court from the decision relative to compensation for mail service.

Impatient at the delay in making these payments, for which it did not consider the fact of pending litigation a sufficient excuse, Congress was still further angered by the company's persistence in paying dividends to its stockholders from its surplus earnings, which it was insisted could not be done if the requirements of the "Thurman Act" were complied with. It is a proper answer to this, that the deduction of the amount of the judgment subsequently rendered from the company's accumulated surplus, did not impair its ability to pay all the dividends that had been declared.

FAILURE OF THE SINKING-FUND PROVISION.

Meantime the operations of the sinking-fund provisions of the "Thurman Act" failed to meet the expectations of the framers of that measure, and in its practical working it proved equally unsatisfactory to the company and the Government.[1] It weakened the company and depleted its resources, without strengthening the security of the Government. The restrictions under which the sinking-fund was required to be invested, proved fatal to its purpose. The bonds to which the investment was limited, could only be obtained at a large premium; so that it very shortly appeared that the actual income from the investment was only about 2.5 or 3 per cent. Not satisfied to have the company invest its own surplus in such a way as to return 6 or 7 per cent and upward, upon it, Congress had taken upon itself the responsibility of investing it. The result was unsatisfactory. Indeed, it was apparent that a sinking-fund, which accumulated at the rate only of 2.75 per cent per annum, would hardly accomplish its purpose. While the company had morally been relieved of the responsibility of providing for its own liabilities, the action of the Government had made it difficult at least to meet those liabilities. The creditor, before maturity of the obligations, had taken the manage-

[1] *See Appendix B.*

ment of the debtor's affairs out of his hands; and yet the debtor remained liable, as before, for the maturing obligations. The debtor protested against having his money invested for him at 2.75 per cent interest per annum. How could he possibly be expected to pay his debts with such disposition made of his means?

The Forty-eighth Congress, in this condition of affairs, could hardly avoid making some effort to settle the relations between the company and the Government upon a more satisfactory basis. A radical change in the sinking-fund feature of the "Thurman Act," if nothing else, seemed urgent. In fact the Auditor of Railroad Accounts, in his first report after the passage of the bill (1879), had called attention to the effect of the provision concerning sinking-fund investments, and recommended legislation. He at the same time communicated the proposition of the company to turn over to the Government, in lieu of the cash payments to the sinking-fund, the first-mortgage bonds of the branch-lines built by the company to protect the main-line business. In his report for 1880, he repeated the recommendation that the sinking-fund be invested in the company's own bonds. Concerning the investments in branch-lines, he said this policy "is undoubtedly the best for insuring a continuance of profitable business for the main line; and so long as the Government has such a large interest as creditor, it cannot but sanction and confirm such investments." The Commissioner of Railroads, in 1881, reported that the sinking-fund investments in currency 6's had been made at as high a premium as 35 per cent, and that a considerable amount remained uninvested, and of course unproductive. He renewed the recommendation of his predecessor, that a change be made in the law. In 1882 the commissioner reported that no investments had been made since April 6, 1881; that over $400,000 remained uninvested in the Treasury; that "the fund has evidently not accomplished the result anticipated, and since April, 1881, may be regarded as having practically failed for want of suitable investment." After showing that

the investments already made, yielded only about 3.5 per cent, and that this was as much a loss to the Government, which has a direct interest in the fund being productive, as to the company, he repeated the recommendation of a change in the method of investment. He added the following suggestion: —

"As many doubts have been expressed as to the ability of the companies to meet their indebtedness at maturity, and as to the efficiency of the provisions for a sinking-fund, I deem it proper to suggest whether it may not be practicable and highly desirable, with the consent of the companies, to change the form of their indebtedness from a running book-account into a settlement and actual delivery of interest-bearing bonds for the amount found to be due on a convenient day, say July 1, 1883, at which time one-half of the interest will have been paid by the United States. Let the ascertained amount be divided into, say, one hundred semi-annual instalments, each to be represented by a redemption bond, one payable each six months, together with interest upon the whole unpaid remainder of the debt, the lien to remain as it is." In 1883 he reported over $850,000 uninvested, and repeated that the sinking-fund was practically a failure. The investments already made, had been made at an average premium of 20 per cent; and the amount in the sinking-fund remaining uninvested was increasing every year. This, he said, was "a manifest hardship to the company;" and he repeated the recommendation of the previous year. In 1884 the commissioner reported that $1,620,000 had been invested in 3 per cents, at a premium of an average of 3.02 per cent, and that $992,485 remained uninvested. The total investments at that time amounted to $2,270,100, at a premium of $172,990.42. The interest on these investments to June 30, 1884, amounted to $139,127.97, or $33,862.45 less than the premium paid; while there remained in the Treasury, uninvested and unproductive, $992,485.91.[1]

Hon. Hugh McCulloch, Secretary of the Treasury, in his

[1] *See Appendix C.*

annual report submitted in December, 1884, referring to this state of affairs, said, —

"I earnestly direct attention to the provisions of the Act of May 7, 1878, creating a sinking-fund for the Union Pacific and Central Pacific Railroad Companies, in the hope that Congress may devise a method for a more judicious investment of that fund. The law now requires the fund to be invested in bonds of the United States; and, in making such investments, the 5 per centum bonds are to be preferred, unless for good reasons appearing to him, and which he shall report to Congress, the Secretary of the Treasury shall at any time deem it advisable to invest in other bonds of the United States. The 5 per centum bonds have all been redeemed, or have ceased to bear interest; and while it would be manifestly unjust to select for investment the 3 per centum bonds only, to be called in for redemption at short intervals thereafter, the only alternative is investment in the higher-rate bonds, which now sell in the market at prices ranging from 13 to 28 per centum premium.

"I deem the plan recommended by Secretary Sherman, in a communication to Congress, in December, 1879, and again in June, 1880, that investment be made in the first-mortgage bonds of the companies, worthy of the consideration of Congress."[1]

Such was the result of six years' operation of the "Thurman Act." The attention of Congress had been called to its practical failure, regularly, every year since the Act went into effect, without avail. Action of some sort could not be much longer delayed.

ACTION OF THE FORTY-EIGHTH CONGRESS.

Early in the session of the Forty-eighth Congress the subject was taken up for consideration in both Houses. There was general agreement that something should be done, and done promptly; but there was, as might have been expected, a considerable divergence of views as to the most expedient

[1] *See Appendix B.*

measure to be adopted. These views may be classified in general terms under two heads, — the first favoring a funding-scheme such as had been recommended by the Commissioner of Railroads, and had received the approval of several successive boards of government directors; the second favoring a continuance of the sinking-fund policy of the "Thurman Act," with modifications of the provisions concerning investments, but increasing the percentage of net earnings required to be paid, and putting the already much hampered company under yet further restrictions and restraints.

The House Committee on Pacific Railroads, though divided on the question, speedily reached a conclusion, and made majority and minority reports. The former recommended the passage of what came to be known as the "Thompson Bill," the main feature of which was the increase of government requirements from the 25 per cent fixed by the "Thurman Act," to 35 per cent of net earnings (afterwards amended on Mr. Thompson's motion to 45 per cent). The minority recommended the passage of what was known as the "Post Bill," which was the practical embodiment of the funding-principle recommended by the Commissioner of Railroads. The fundamental principle of the "Thompson Bill" was very clearly set forth in the opening sentences of the majority report, in which it is stated that "it is evident, that, when the bonds were given to aid the roads, the intention was for them to provide out of their net assets for the payment of the interest as it fell due, and also to provide a 5 per cent sinking-fund which would retire the principal at the end of twenty years from the completion of the roads." The objection to this is twofold. In the first place, it is contradicted by the official record of the very body to which the report was made. This has already appeared, chapter and verse, in the present paper. In the second place, as a matter of law, the Supreme Court of the United States had decided the question, and in exact accordance with the letter of the "Congressional Record." Said Justice Davis, in rendering the decision of that court, "In addition to all that

has been said, there is enough in the scheme of the Act, and in the purposes contemplated by it, to show that Congress never intended to impose on the corporations the obligation to pay current interest."

The spirit in which the "Thompson Bill" was conceived appears in the report which accompanied it. It was therein asserted that the Pacific Railroad Companies were making no provision voluntarily for the payment of the rapidly increasing debt; that "they only do what the statute compels them, and this slowly and with bad grace;" and it was intimated, that they were endeavoring to defraud the Government by diverting freight over parallel lines owned by themselves, as well as by discriminating in freight-charges against the subsidized roads. In view of the strained relations then existing between the Government and the companies, it was perhaps not unnatural that the feeling indicated in these statements should find expression. In any event, the House was so entirely in sympathy with the report, that Mr. Thompson, the author of the bill which accompanied it, had no difficulty in amending the measure in the course of debate so as to increase the requirements from 35 to 45 per cent; and so amended, it was passed without a division. Nor can it be doubted that it was a fair expression of public opinion, at that time exceedingly hostile to the companies.

One of the advocates of the measure, in the course of the discussion, by a very plausible arrangement of figures, showed, that, after paying 35 per cent of the net earnings into the Treasury, the company could pay 5.25 per cent dividends to stockholders, and still have a surplus of over $2,000,000 from revenue derived outside the company's earnings. It was on the strength of this statement, no doubt, that the bill was amended so as to make the government requirement 45 instead of 35 per cent.

It may be of interest to make the same calculation on the basis of 45 per cent on the net earnings of 1884: —

Net earnings, Union Division, year 1884	$6,680,346 43
Net earnings, Kansas Division, year 1884	1,916,456 07
	$8,596,802 50
Deduct interest on first-mortgage bonds	2,011,920 00
	$6,584,882 50
Forty-five per cent of which is	2,963,197 13
	$3,621,685 37
Interest on other bonds of the company	3,357,550 69
Leaving for company sinking-fund requirements, and other income expenses	$264,134 68

During the year those expenses were: —

Discount, interest, and exchange	$366,077 76	
Company's sinking-fund requirements	591,540 00	
Guaranteed interest	27,600 00	
Taxes on lands, Union Division	29,950 36	
Expenses conducting land-sales, Union Division	54,887 37	
		$1,070,055 49
Deficit on this basis		805,920 81

In the Senate, the matter was considered by the Judiciary Committee, which reported in April, 1884, what was known as the "Garland Bill," being the same in terms, practically, as the minority bill of the House Committee on Pacific Railroads, — on the funding-plan recommended by the Commissioner of Railroads. On the 21st of June, 1884, the "Thompson Bill," passed by the House, came to the Senate, and was referred to the Judiciary Committee. No action was taken on either bill at this session. On the 21st of January, 1885, Mr. Edmunds in the Senate offered a bill similar in effect to the "Garland Bill," with slight changes in detail, which was referred to the Judiciary Committee. On the same day Mr. Hoar reported a new bill as a substitute for the "Thompson Bill" passed by the House, in the hope, that, should it be passed by the Senate, it might, in that form, be considered,

and possibly passed, by the House before the end of the session. In its general features it did not differ from the other sixty years' funding-bills.

As finally agreed upon by the committee, this bill provided that the amount of the indebtedness to the Government, of the several subsidized railroads, should be ascertained as of the first day of April, 1885, upon the same principle as if the whole sum of the bonds and interest paid and to be paid, — proper deductions being made for payments already made, — were to be paid in cash on that day; the amount so ascertained to be divided into one hundred and twenty equal parts, upon which interest should be calculated at 3 per cent per annum, and that the payments of these instalments should be provided for by a new issue of one hundred and twenty bonds of equal amount, one of which should be payable at the expiration of each six months.

In the pressure of business at the close of the session, there was not sufficient time for the consideration of this measure by the Senate; and no action was taken.

On the 26th of February, 1885, Senator Hoar introduced a new bill, which was ordered to be printed, and laid on the table; the object being, to bring the principle it contained before the public for discussion in anticipation of the meeting of the next Congress.[1]

THE KEY TO THE CONTROVERSY.

Such are the main facts of importance in the history of the relations between the Government and the Union Pacific Railway Company. The purpose of this paper has been to set them forth in chronological sequence in as brief space and convenient compass as possible. It is believed that all the essential points have been presented, and that from them an intelligent judgment concerning the present situation may be formed. It is of the highest importance to the Government, as well as to the company, that the Forty-ninth Congress, which will soon be called upon to consider and act

[1] *See Appendix D.*

upon the whole subject, should be thoroughly informed, both as to the origin of the existing relations between the Government and the companies, and the course of litigation as well as legislation which has attended the long controversy, and gradually led up to the present posture of affairs.

Obviously, the key to the whole difficulty lies in the unwillingness of Congress, and the people generally, to admit that the purpose of the original charter was to place among the inducements to the enterprise the postponement of interest payments till the maturity of the debt. The dispute began there; and it is not difficult to trace all the differences that have since arisen to that source. The impression derived from an unprejudiced reading of the plain story of the transactions between the Government and the company, is that the company was generally believed to have got the better of the Government in the original charter, and to have clung with uncommon tenacity to the rights thus acquired; and that the Government has been trying to get the original wrong made right ever since.

It will be found by reference to the debates in Congress over the Acts of 1862 and 1864, that the common view taken of the probable cost of both roads — Union and Central — to the Government, was that it would be upwards of $60,000,000, the annual interest on which would be $3,600,000. It has been seen, the item of transportation between the Missouri River and the Pacific Ocean was at that time over $7,000,000. If this estimate is correct, the saving in this item alone would both cover the interest, and pay the debt, in twenty years. But the advocates of the bill were not appalled by the figures representing the entire principal and accrued interest, $168,000,000, as possible to be due and outstanding at the maturity of the debt. They did not shrink from confronting that remote possibility, but boldly asserted, and adduced figures to prove, that even then the Government would be the gainer. Nor were they mistaken. The accounts of the War Department alone furnish evidence, no less eloquent than conclusive, in justification of them and of their action.

Yet, strangely enough, this large aggregate at the maturity of the debt, which so appals the public and troubles the company, is wholly due to an unaccountable disregard by Congress, in authorizing the Pacific railroad subsidy loan, of all of its own unvarying rules of financial policy. That loan was not made redeemable before maturity, at the option of the Government. A provision to this effect was a marked feature in all the other loans of the Rebellion period. It gave to these loans their popular names, as the five-twenties, the ten-forties, etc. All are familiar with the enormous reduction of interest which the subsequent exercise of the option enabled the Treasury to effect. For some unexplained reason, the Pacific railroad thirty-year 6 per cent bonds contained no such option. They could not be called. This omission has occasioned the whole difficulty of the Pacific railroad indebtedness. Could the bonds have been called at the expiration of ten years after they were issued, the rate of interest on the loan could have been reduced one-half. The problem of dealing with the accumulation at maturity would then have presented no difficulty, for the annual interest would have been but $750,000 instead of $1,500,000. It nowhere appears that the companies were in any way responsible for this exceptional act. In referring to it, Mr. John Sherman, an ex-secretary of the Treasury as well as chairman of the Finance Committee of the Senate when the Act providing for the loan was passed, has professed his inability to account for so striking a departure from settled policy. Yet the Pacific railroad companies must bear the whole burden entailed by it. Under such circumstances it does not seem wholly unreasonable that they should ask Congress to apportion the burden to their strength. The reasonable private creditor would assuredly do as much.

But this is, perhaps, not material to the present issue. Recurring to the conditions which surrounded the enterprise in 1862–64, Senator Wilson of Massachusetts then emphatically declared in debate, that no man could look into these conditions, "and come to the conclusion that our money will

come back in any other way than is provided for in the bill; and that provision is for the carrying of the mails, and doing certain other work for the Government of the United States. In this way we are to get our compensation; and, in my judgment, it will be ample and complete." To the same effect, Senator Morrill of Vermont said, "As a commercial and economical question, such a road is utterly defenceless. . . . Every dollar that it takes to construct the road is to be contributed by the United States." Had the public mind since been habituated to such views as these, — the only views held in 1862–64, — had it been kept in constant remembrance of the conditions which made the extreme limit of cost seem not unreasonable, there would have been no controversy over this question. But as the conditions which surrounded the early days of the enterprise, and made its accomplishment at the time such an extraordinary feat of energy and organizing capacity, — as all this faded from memory, it was also discovered that the builders of the pioneer road had made large sums of money in its construction. Other roads were also pushed out into the now explored wilderness by private enterprise; and it became apparent that if the Government had known half as much before it granted the franchise, as it did after the road was built, it might have made better terms, and got the road at less cost. As is not unusual with those who enter into business undertakings, "hindsight" revealed much which foresight had failed to discover.

Yet, from the moment this became apparent, all the benefits and economies which had accrued to the Government from the enterprise, were forgotten or assumed as things of course. It was not even taken into account that the road was made to suffer from the very benefits it brought; that its failure to pay the interest on its subsidy was because it had so cheapened transportation, that Government now had twice the service for less than half the former cost. The public thought nothing of this; and yet it was all so, and is now matter of history. As respects the accumulated interest on the Pacific

Railroad subsidy bonds, the United States, therefore, occupy the enviable position of him who both ate his cake and had it too. It has already received back that interest several times over in the form of cheapened transportation; and the companies are still bound to pay it all back, dollar for dollar. For the Government, it was a good business transaction: never was there a better.

Meanwhile the construction of the term "net earnings," as used in the charter, has been settled by the recent decision of the Court of Claims; and the only question remaining open under the charter and its amendments is, whether the Post office Department has allowed the company fair and reasonable rates for mail transportation, it having allowed the Union Pacific no more for carrying the mails through a sparsely populated region, and over deserts and mountains, than it allows roads east of the Mississippi River. The injustice of the decision is manifest. Whether it is law, will, in a few months, be determined by the Supreme Court on an appeal which the company has taken. The amounts claimed by the Government, as due from the company, and awarded by the Court of Claims, have meanwhile been deposited in the Treasury; and there is now no ground for complaint against the Union Pacific, on the score of default or delinquency.

THE EXISTING SITUATION.

This, then, is the situation confronting the Forty-ninth Congress. The Union Pacific cannot be accused of dereliction or contumacy. It has discharged every claim of the Government, has obeyed all its behests, and does not deny, that, so long as the decision of the Supreme Court in the "Thurman Act" case stands unreversed, Congress can do with it and its revenues whatever it pleases.

What will Congress do? The interests of a large number of stockholders, the future of the enterprise, and the final payment of the government debt, depend on the answer to this question.

Might it not be well for Congress to embrace the opportunity afforded by this clean slate, from which all the old scores have been expunged, to consider the matter purely and simply as a business transaction, to be adjusted — without regard to former controversies and complications — on a business basis? The interests of the Government and the company do not in the least conflict: on the contrary, they are identical. The company professes a desire to meet all its obligations to the Government; and to have some definite basis of adjustment determined upon, which shall secure that end beyond question, with the least possible disturbance to the interests of its stockholders, or interference with its own vested rights. Is it too much to ask that Congress, instead of regarding the company as a defaulting or absconding debtor, accept these professions as sincere?

Taking this as a starting-point, the probabilities are that a satisfactory and speedy conclusion would be reached. When Congress has once made up its mind that the administrators of the company's affairs seriously intend to manage them honestly, it will not hesitate long over the question whether they can be trusted to manage them wisely. The concession, that those whose business it is to have intimate knowledge of the company's affairs can manage them better than a Congressional committee, would easily follow.

Up to the present time, only two methods have been considered by Congress in its treatment of the debt. One is that marked out in the "Thurman Act," which requires a fixed percentage of the net earnings to be devoted to a sinking-fund, and makes no further provision concerning refunding, but leaves the debt to take care of itself at maturity. Since the House passed the "Thompson Bill," in 1884, there have been considerable changes in the condition of affairs all over the country, and some not unimportant changes in the management of the company and its policy of administration; and it is believed that the "Thompson Bill," or any modification of it in its distinctive features, would not now receive the approval of either branch of Congress.

The only other method of dealing with the problem which has received serious consideration, is the funding-plan first proposed by the Commissioner of Railroads in 1882, and recommended to the attention of Congress by the commissioner and the government directors each year since then. The merit of this, or of any funding-plan, is, that it actually does something towards a definite adjustment of the whole matter upon a permanent basis, so that both parties may know what to expect. The questions arising under any funding-plan such as has been proposed, relate to the order and progression of interest payments; as, for instance, under the sixty-year plan the present worth of the debt and interest, paid and to be paid by the Government, being ascertained, and divided into one hundred and twenty equal parts, the question arises, whether the company should be required to pay semi-annually one bond for one one hundred and twentieth of the whole debt, with only the interest due thereon, or there should be added to each semi-annual payment the amount of interest accrued upon the bonds remaining unpaid; or whether the whole sum should be so divided as to make the semi-annual payments exactly equal during the whole sixty years. By the arrangement first suggested, the company would pay in round numbers about $920,000 the first year, with increasing interest from that time till the sixtieth year, when the payment would be about $2,500,000. The second method would reverse this order, making the payments about $2,500,000 the first year, and about $920,000 the last. The last plan, equalizing payments through the entire period, would make the requirements about $1,800,000 a year. Under any of them, the entire debt, principal and interest, would be extinguished at the end of sixty years.

It may be said in favor of the first proposition, that, in putting the lowest payments first, it makes allowance for the present depression in business, by which the ability of the company to pay is temporarily weakened, while a gradual increase of its business through the growth of the system, and consequent development of the country's resources, is

taken into the account, enabling it more easily to meet increasing requirements. Concerning the second, those now in charge of the company's affairs have, after careful examination, expressed the opinion that the requirement of $2,500,000 to begin with, would embarrass the company to such an extent as to make it quite problematical whether it would be able to stagger under the weight: should it prove unable to do so it must perforce break down, to the loss of the Government and its own ruin. As to the third proposition, of equalized payments, the same authorities have committed themselves to the belief that there is a fair prospect that the company might be able to carry the burden without disastrous results.[1]

POLICY OF THE PRESENT MANAGEMENT.

Meanwhile, so far as the company itself is concerned, none of these plans of adjustment either emanate from it or meet its approval. The position of the present management has been defined by Mr. Adams, the president of the company, as an "expectant" one. It waits to see what Congress will do, or command it to do. The situation is anomalous and difficult, — one which could hardly arise in ordinary private business relations. No private creditor, for instance, would be permitted to dictate to a debtor, in advance of the maturity of a mortgage-debt, what disposition of his assets should be made, with a view to paying the mortgage-debt when it became due. Least of all would a creditor be justified in compelling a debtor in active business to invest the profits from his business in securities returning less than 3 per cent annual interest, so as to provide in advance for secured claims. Could a case be imagined in which he did or could do so, the debtor would very properly say, that, unless he was left to manage his affairs in his own way, he would not and could not be responsible for results. In all ordinary business dealings, the debtor proceeds at his peril

[1] See Letter of President Adams to Senator Hoar, Feb. 9, 1885; Annual Report of Union Pacific Railway Company for year ending Dec. 31, 1884, p. 173.

in presence of a secured creditor. He loses his property if he cannot pay what he owes when the day of payment comes.

The Union Pacific management was shaping its course on the theory that the ordinary relations of debtor and creditor would be observed between the Government, its largest creditor, and itself. The company was to be left to manage its own affairs in its own way, subject always to the penalties expressed in the bond. If, when pay-day came, it could not pay its debts, its creditor might take its property. Meanwhile it might make its own provisions to meet its liabilities. Not satisfied with that posture of affairs, Congress intervened. The control and management of the debtor's assets and quick capital were taken out of his hands. From that day he ceased to be responsible, morally, for results; and yet he remained legally liable as before.

Responsible as they are for the management and preservation of one of the largest corporate properties in existence, the president and directors of the Union Pacific do not concede that the debt the company will, in 1895–97, owe the United-States Government, differs in any way, morally or legally, from other debts then or thereabouts due. They do not admit that the representatives of the Government, in Congress or the departments, are more sincere, more honest, or more earnest, than they are themselves in the desire for a full payment of the government debt. They do not admit that Congress is more competent than they to devise, and carry into execution, measures looking to that end. And here they appeal to the record. They say, that, under the management of the company's own officers, a system of branch railroads has been built up, without which the original road would not have been able to earn its fixed charges, and that this extension of its system is of itself the best security the Government could have for final payment of its debt. While this extension has been in progress, the road has been raised to the rank of first-class conservative properties by the payment of reasonable dividends to its stockholders. This was their policy. Congress compelled

the adoption of a different policy. Under this, the surplus earnings have been diverted to a sinking-fund, in which there are now over five millions locked up, paying an interest of less than three per cent: the building of branches has stopped, and the payment of dividends has ceased. The company's officers submit that the wisdom of the policy imposed on them by Congress does not appear in a comparison of results.

But the policy of the company is, perhaps, best set forth in President Adams's own words. In his letter to Senator Hoar in February, 1885, he said, —

"From my point of view, it is not the interest, either of the Government or the people, to force the Union Pacific to annually take these large sums out of its quick capital, and lock them up in an overflowing national Treasury. The Union Pacific serves six States and four Territories. There is not one of those States or Territories which is not to-day calling for railroad development, which, if it could be provided, would not only afford whole communities sorely needed business facilities, but would add largely to the traffic and income of this company. Every dollar of money, therefore, which is taken out of our business annually, is so much which could be applied to the development of the country, not only to the great advantage of the Union Pacific, but to the increase of the security of the Government, so far as the ultimate recovery of its debt is concerned. Each request for these additional facilities which reaches me will now have to be met with the answer, that the money which would have sufficed to supply it has been paid into the national Treasury. The Government has taken from us, and the communities we serve, just so much fructifying capital. The Union Pacific now has in the Thurman-Act sinking-fund, bringing less than three per cent interest a year, some $5,000,000. That $5,000,000 would easily construct and equip 350 miles of railroad. Those 350 miles of railroad would bring into the Union Pacific system, probably ten times the net income of the sinking-fund investments. The first-mortgage securi-

ties, representing the ownership of this additional mileage, might be deposited in the Treasury; and if, at the maturity of our loan, the company was unable to raise the necessary money to pay the Government off, it must take the consequences. The Government could sell out the securities representing the whole Union-Pacific system to the highest bidder. In all human probability, no loss would then have been incurred, while an inestimable benefit would have been conferred upon the communities which that system served.

"Such, it seems to me, would yet be the true business policy for the Government to pursue with this company. Congress might impose any restrictions it saw fit in regard to the construction of auxiliary lines. It might insist upon their securities of every description being deposited in the Treasury. But for a dozen years to come, before the Pacific loans mature, the people in the States and Territories beyond the Missouri and among the mountains would have the advantage of those lines; and thus, what is now a barren sinking-fund, useful to no one, would be converted into what seems to me the most beneficent system of internal improvement which could be devised."

SOME ACTION NECESSARY.

The following is an approximate statement of the subsidy debt, as, with unchanged conditions, it will stand at maturity: —

Principal of debt	$33,539,512 00
Interest at maturity	60,371,121 60
	$93,910,633 60
Repaid to June 30, 1885, 17 years, average of $1,193,777.22 per annum	20,294,212 72
Unpaid	$73,616,420 88
Estimated repayment in 13 remaining years .	15,519,103 86
Unpaid at maturity	$58,097,317 02

This is a large debt to be provided for: from the taxpayers' point of view, a very large sum for the Government

to lose, if it should come to that. What the Government already has had, and will yet have, in return for these fifty-eight millions, has already been alluded to. It was paying over $7,000,000 annually for transportation to the Pacific coast before the building of the road. This was reduced almost immediately to about $2,000,000, and is now less than $1,000,000; for which sum it has four times the amount of freight carried through its own territory in shorter time. It has brought two centuries and a half of almost incessant Indian warfare to an end. If, then, no dollar of its advances to the Union Pacific were ever recovered, so far from being the loser of $58,000,000, the Government, on any fair system of computation, would be the gainer by many times that amount. No senator or member of Congress would then have hesitated, nor would he now hesitate, to vote $58,000,000 of the public money outright to any body of men who in return would secure for the Government, during the next fifteen years, what the Union Pacific has secured for it during the last fifteen. Did he hesitate to do so, he might prove himself an astute politician, but he would be no statesman, and a bad man of business.

Yet this large debt is to be provided for. No suggestion even is made, that, on account of the great benefits derived by the Government from the enterprise, the Union Pacific should be treated otherwise than as an ordinary debtor. The magnitude of the sum has been dwelt upon as proof in itself, that there could be no real purpose on the part of the company to take care of the debt at maturity. The sum is large; but there is no reason to suppose that it could not have been provided for had the company been left to manage its resources in its own way, subject to the conditions of the contract and the ordinary liability of a debtor. It is perfectly true, that, when the "Thurman Act" was passed, no sinking-fund machinery had been elaborated, and set at work, by means of which provision was to be made for the payment, at maturity, of the ever-accumulating government loan. It is clear, too, that the omission to

provide this machinery, whether really useful or not, was a grave mistake on the part of those then responsible for the management of the company's affairs. Congress was in no unreasonable mood; and the existence of such a sinking-fund, actually working to the desired end, would probably have been accepted as a sufficient pledge of the company's intentions. Yet, though no sinking-fund machinery was provided, provision to secure the government debt was, as a matter of fact, being made far more effectively than any sinking-fund could make it, through the rapid construction of the Union Pacific auxiliary railroad system. Largely built out of the surplus earnings of the mother company, the securities, sixty-five millions in amount, representing the ownership of this branch system, are to-day in the Union Pacific treasury; and, as against public or private debt, they constitute the most effective sinking-fund which it is in the power of legislators or business-men to provide.

But it may be argued, that this auxiliary branch system — without which the subsidized portion of the Union Pacific would now be a valueless through-line — was mainly built up since the "Thurman Act" was passed. The operation of the "Thurman Act," therefore, has not prevented the construction of the auxiliary system. It is true, the auxiliary system has been mainly constructed since the "Thurman Act" was passed. But it is also true that the recent embarrassment of the Union Pacific was due to the operation of that Act. On the 17th of June, 1884, when Mr. Dillon retired from the presidency of the company, and was succeeded by Mr. Adams, the unfunded debt of the Union Pacific, in the form of bills and accounts payable, amounted to $9,700,000. This represented work done in the construction of branch or auxiliary lines. At the same time, there had been paid into the United-States Treasury, under the provisions of the "Thurman Act," in addition to the amounts provided for in the original agreement, the sum of $4,000,000, of which $3,500,000 was locked up in a sinking-fund, which, under the law, can only be invested in bonds earning 2.75 per cent interest: in

the mean while, the company, ignoring that fact, had been investing the same quick capital in branch and auxiliary lines. The result was financial embarrassment amounting almost to ruin. It was then apparent, that, if the Government ate the company's cake, the company could not have it too.

The financial outcome of the situation had thus become plain. The "Thurman Act" sinking-fund and the company's auxiliary system sinking-fund could not both be provided for out of surplus earnings. The fund did not suffice. The "Thurman Act" sinking-fund of course took precedence. That had to be provided for in any event. The Government had, therefore, at last destroyed the policy in the management of its affairs which the company had matured, substituting in place of it another policy, in which the company had no faith. As the result of that governmental policy, the money, which, in the hands of the company, would have been made to return an interest of ten or twenty per cent a year, now returns two and a half per cent. It can never return more. The management of its own affairs has thus been taken out of the hands of the company, while it is still left responsible for results. The Thurman-Act sinking-fund — condemned, as it is, by secretaries of the Treasury, by commissioners of railroads, and by committees of Congress — cannot meet the maturing debt. The auxiliary railroad system, which should have been built out of the money which went to make up the sinking-fund, cannot be built. Yet the years are rapidly passing. The existing situation is unsatisfactory, and can result only in embarrassment. The sooner a definite basis of adjustment is agreed upon, the better for all concerned.

APPENDIX.

A.

PAYMENT OF DIVIDENDS.

Concerning the policy of paying dividends to stockholders, Senator Thurman, in reporting the bill which bears his name, stated that the committee, in preparing it, "had recognized the fact that it is for the interest, not only of the companies, but of the country and the public, that the stockholders should receive some reasonable dividends; because, where roads pay dividends, they are always better managed than where they pay none."

. . . . . .

It was not the purpose of the Thurman Bill to cripple or embarrass the company. It was thought, at the time the bill was under discussion, that the road was yielding enormous profits; that it could, without inconvenience or loss, apply these profits to a sinking-fund, and that a portion of them should be so applied instead of being divided among the stockholders. In submitting the committee's report, Mr. Thurman said, —

> Just think of that great corporation, the Union Pacific Railroad, extending 1,200 miles, which had, at the next report before the last, a floating debt of only $700,000, and had nearly $3,000,000 of available assets to pay at any moment. There is scarcely any railroad in the United States, fifty miles long, that has not a floating debt as large as that. The Central Pacific has substantially no floating debt at all; but it has a surplus of $10,265,000, and pays dividends of from eight to ten per cent per annum to its shareholders, and I believe pays them quarterly. I venture to say, that, in less than twenty years from now, those corporations will be the two richest corporations on the face of this earth. It may be said, then, why do you want any sinking-fund? If they will be the richest railroad corporations in the world, why do you want any security? You do not need it. Yes, Mr. President, we do need it; for experience has shown, that, no matter how rich a railroad corporation may become, security for its creditors is essential: and, as my friend (Mr. Bayard) rightly states, suppose the road is security, we do not want the road; we want our money.

The present situation differs materially from that described by Mr. Thurman, to meet which the Act of 1878, known by his name, was devised.

B.

SINKING-FUND INVESTMENTS.

Senator Thurman, in submitting the report of the committee, called the attention of the Senate particularly to the provisions concerning the sinking-fund investments. He said, —

The Senate will see that the committee propose that this sinking-fund shall be invested in bonds of the United States. I do not know that there is any objection to that. But the bill provides, that, in making the investment, the Secretary shall prefer the five per cents. Why is that? For this reason: The debt of the United States, the bonds of the United States, bear either six per cent, five per cent, four and one-half per cent, or four per cent interest; and, if the Secretary is to invest in them, he is to choose between these kinds of bonds. But the six per cents are all subject to call now, with the exception of the 1881's; and they will be payable three years from this date

Mr. ALLISON. — And also except the bonds issued to these companies by the Government, bearing six per cent. They are not immediately payable.

Mr. THURMAN. — They are not due until 1895.

Mr. ALLISON. — They are not subject to call.

Mr. THURMAN. — They are not subject to call. If they were, it would be obvious that you might take them. Any investment, therefore, in six per cents, is out of the question. They are all subject to call; and the Government certainly does not intend, at least I hope it does not intend, to extend the six per cent loan for twenty-three years, when it can borrow as much money as it wants at four and one-half per cent, and possibly four per cent. The six per cents are, therefore, entirely out of the question. The objection to the four and one-half per cents is, that they are too short in time also. They would do very well, because, for the reason that I will specify, they would produce an amount of interest equal to that which the company has to pay in the end; but they are too short. The four per cents are not sufficient in amount. That leaves but five per cents as the great resource of the Secretary of the Treasury for the investment of this sinking-fund. They are long enough. They mature just about the time the Government loan matures; and the rate of interest is such, that, compounded as it is required to be by this bill, the amount of interest that will accrue upon the sinking-fund will be equal to the interest which the company will have to pay at the maturity of the government loan. The companies have to pay six per cent interest; but, mark it, there are no rests. Twenty-three years from now they have to pay the accumulated six per cent interest, but there are no rests. If any one will make a computation, he will find that money at five per cent compounded semi-annually, as it is here provided that it shall be compounded, will produce, in the time we have to consider, a larger sum than six per cent upon the same amount of money not compounded. It is obvious that the amount of accretion on this sinking-fund — that is, the interest upon it — ought to be sufficient to meet the interest which the companies will have to pay for the same period of time on the government loan.

The five per cent bonds, even if purchased at a premium of ten per cent, will produce that interest, owing to the compounding of interest, as I have stated. The provision of this bill, therefore, in this respect, is perfectly fair to the companies, and is just to the Government.

Notwithstanding so much care was taken in this important matter, the Secretary of the Treasury, in 1879, and again in June, 1880, reported to Congress that investments in the five per cents could not be profitably made, the loan having so short a time to run; and additional legislation was recommended. The session closed, however, without any action being taken; and investments were made in the currency sixes, which had been considered "entirely out of the question," at a premium of over 128. In 1881 the Commissioner of Railroads reported that the last investments were in currency sixes at 135, at which point they stopped. On June 30, 1882, he reported that $407,441 99 remained in the Treasury uninvested. On June 30, 1883, this amount had increased to $858,532.16, and on June 30, 1884, to $992,485.91.

The following is the correspondence on this subject:—

TREASURY DEPARTMENT, Feb. 21, 1879.

Hon. Samuel J. Randall, Speaker, House of Representatives.

SIR,—The third section of the Act of Congress, approved May 7, 1878, entitled "An Act to alter and amend the Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and also to alter and amend the Act of Congress approved July 2, 1864, in amendment of said first-named Act," provides, "That there shall be established in the Treasury of the United States a sinking-fund, which shall be invested by the Secretary of the Treasury in bonds of the United States, and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate, and be disposed of as hereinafter mentioned. And in making such investments, the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States." . . .

The only investment yet made under the provisions of this Act has been made in the five per centum bonds of 1881, as follows: On account of sinking-fund, Union Pacific Railroad Company, principal, $39,500, and premium $3,049.37; and on account of sinking-fund, Central Pacific Railway Company, principal $36,700, and premium $1,880.88.

It is very probable that this loan will be called in and funded into four per cent bonds within one year after it is due. If, therefore, this loan is redeemed by May 1, 1882, this investment would only realize to the fund $3\frac{32}{100}$ per cent per annum.

The advantage to the fund of investments in four per cent bonds at par is apparent, unless the market price of the four and one-half per cent bonds falls below 105.03; the five per cent bonds below 103.02, and currency sixes below 126.44. I have therefore to inform Congress, in accordance with the requirements of the statute, that investments will hereafter be made in the four, or four and one-half, per cent bonds or the currency sixes, as may be most advantageous to the fund, having regard to the length of time the investment is to continue.

As the interests of the United States and the railroad companies in this fund are reciprocal, I would recommend that the law be so modified as to authorize the Secretary of the Treasury, at his discretion, to invest such amounts as may be from time to time payable to this fund in the first-mortgage bonds of the respective roads, as authorized by the tenth section of the Act of July 2, 1864 (13 Statutes, 358).

This will give the roads a better rate of interest on the fund, without detriment to the United States.

The United States, as a deferred creditor, is interested to the extent of the preferred bonds.

The ninth section of the Act of May 7, 1878, provides that all sums required to be paid into the sinking-fund under this Act, or under the Acts hereinbefore referred to, are made a lien upon all the property and franchises of the roads, "subject to any lawfully prior and paramount mortgage, lien, or claim thereon." As these bonds are a prior lien on this fund, better investment for the fund itself cannot be obtained, so long as they can be purchased below the market rate of the currency sixes.

Very respectfully,

JOHN SHERMAN, *Secretary.*

TREASURY DEPARTMENT, Dec. 8, 1879.

Hon. Samuel J. Randall, Speaker of the House of Representatives.

SIR, — I have the honor to call attention to the recommendation made to Congress, in my letter of February 21, 1879 (copy enclosed), upon the subject of the investment of the sinking-fund of the Union and Central Pacific Railroad Companies, as contemplated in the Act of May 7, 1878 (20 Stat. 58), and to enclose herewith a copy of a letter from the Treasurer of the United States of the 6th instant, upon the same subject.

No action having been taken by Congress toward a modification of the law, in pursuance of my recommendation of last year, I have again to recommend the enactment of a statute which will give the Secretary of the Treasury authority to invest such amounts as may be from time to time payable to those funds in the first-mortgage bonds of said companies, or in any interest-bearing bonds of the United States.

The following draft of a joint resolution is submitted for the consideration and action of Congress.

JOINT RESOLUTION.

Authorizing the Secretary of the Treasury to invest the sinking-funds of the Union and Central Pacific Railroad Companies in any United-States bonds, or in the first-mortgage bonds of said companies.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized to invest the sinking-funds established under the third section of the Act of May 7, 1878, entitled "An Act to alter and amend the Act entitled 'An Act to aid in the construction of a railroad and telegraph

line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the Act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named Act," in any interest-bearing bonds of the United States, or, respectively, in the first-mortgage thirty-year bonds of the Union Pacific Railroad Company, and of the Central Pacific Railroad Company, authorized by section 10 of the Act of Congress of July 2, 1864, chapter 216, and Section 1, of the Act of Congress of March 3, 1865, chapter 88.

Very respectfully,

JOHN SHERMAN, *Secretary.*

TREASURY DEPARTMENT, June 14, 1880.

Hon. Samuel J. Randall, Speaker, House of Representatives.

SIR, — Section 3 of the Act of May 7, 1878 (20 Stat. 58), establishes in the Treasury of the United States a sinking-fund for the Union Pacific and Central Pacific Railroad Companies, which shall be invested by the Secretary of the Treasury in bonds of the United States, and requires such investments to be made in the five per centum bonds of the United States, unless for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

On February 21, 1879, and again on December 8, 1879, the Secretary recommended that the law be so modified as to allow the Secretary of the Treasury, at his discretion, to invest such amounts as may be from time to time payable to the fund, in any bonds of the United States, or in the first-mortgage bonds of the roads interested, preference being given to the latter for the reason that they constitute a prior lien upon all the property and franchises of the roads, and the United States, as a deferred creditor, being interested to the extent of such bonds.

Investment in the four, four and one-half, and six per centum bonds of the United States will yield interest on the principal so invested as follows: —

DENOMINATION.	Period to Payment.	Rates of Interest realized.
Funded loan of 1907, registered and coupon . .	27.14 years.	3.62
" " " 1891, registered	11.32 "	3.70
" " " 1891, coupon	11.32 "	3.52
Currency sixes, registered	14.61 "	3.85
" " "	15.50 "	3.93
" " "	15.65 "	3.95
" " "	15.73 "	3.95
" " "	16.65 "	4.02
" " "	17.65 "	4.09
" " "	18.65 "	4.15

The advantage to the fund of investments in other bonds than those preferred by the law must therefore be apparent; and for this reason I have to inform Congress, in conformity with the requirements of the statute, that investments for said sinking-fund will hereafter be made in such bonds of the United States as may be most advantageous to the fund, having a due regard to the length of time such investments are to continue.

Very respectfully,

JOHN SHERMAN, *Secretary.*

C.

VARIOUS PLANS PROPOSED.

In his annual report for 1879, the Auditor of Railroad Accounts submitted, as his first recommendation of legislation "to remedy defects in present laws, to promote the welfare of these railroads, and to protect the Government in its interests and rights," the following: —

First, That the Act of Congress approved May 7, 1878, entitled "An Act to alter and amend the Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two, and also to alter and amend the Act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named Act,'" be amended (1) so as to authorize the sinking-fund to be invested in the first-mortgage bonds of the respective companies named therein, or such United-States bonds as the Secretary of the Treasury may prefer, and (2) so that the date of payment of the additional amount required under section 4, be changed to the first day of April in each year, and (3) that the settlements and payments for the sinking-fund be required to be made semi-annually instead of annually.

In support of these amendments, it is urged, as to the "first-mortgage bonds" investment of the sinking-fund, that they pay six per cent interest — the present investment paying only five per cent; that the premium is but about ten per cent, while that of the United-States five per cents has been over five per cent; that they are co-equal with the United-States subsidy bonds as to maturity; that the first-mortgage bonds of the companies are first to be paid by the accumulated sinking-fund; and that, when these first-mortgage bonds are paid, the United-States bonds become a first lien on the property. If this should not be authorized, authority should at least be given to invest the fund in the United-States subsidy or other United-States bonds. These railroads find it necessary to aid or build branches and extensions, in order to protect the trunk-line business, upon which mortgages are made, and bonds issued. The companies propose, that, in lieu of the actual cash payments now required to be made by them into the sinking-fund, the first-mortgage bonds of these branch-lines be accepted at par for the sinking-fund. If these bonds pay six per cent interest, are guaranteed by the trunk-line company, and are issued to an amount of actual cost, — say, not over $7,000 or $8,000 per mile of railroad,

— they certainly must be quite as valuable security as the first-mortgage bonds of the trunk-line, which were issued to an amount of nearly $26,000 per mile, and their branch-line bonds will be much more profitable for the sinking-fund.

As to the change of date of payment, it is found that one month between the close of the year's business and the date of payment, is insufficient time wherein to settle their accounts for the year by the companies themselves, the transportation accounts by the accounting officers of the Treasury, and for this office afterwards to examine both accounts, and report the amount due under the law.

As to the semi-annual settlements proposed, it is urged that they would accommodate themselves to the fiscal year of the United States; that they could be much more easily effected; and that the sinking-fund would be considerably benefited by the more frequent payments.

In his report for 1880, the same officer says, with reference to the sinking-fund investments under the Thurman Act, —

The amount of premium paid is so large that the companies have protested against investment at such heavy cost. The "currency sixes" purchased have been as follows: —

	Premium.
$42,000 at 125	$10,500
33,000 at 126	8,580
70,000 at 128½	19,950
166,000 at 129½	48,970
$311,000 (averaging nearly) 128.30	$88,000

The honorable the Secretary of the Treasury in December, 1879, and again in June, 1880, informed Congress of the difficulties which lay in the way of a just and profitable investment of these moneys; the funded loan of 1881, five per cent bonds, having so short a time to run: but the session closed without any action being taken; and the investment was made in "currency sixes" at that large premium, as a better investment than was offered by any other United-States bonds, to which the law limited the Secretary of the Treasury. The first-mortgage bonds of the company — first payable from the sinking-fund — are undoubtedly the best bond investment for this fund; but better than any investment in bonds, which is always more or less liable to influence the market value of the securities sought, the amounts, as covered in to these sinking-funds, should be credited with interest, at, say, six (6) per cent per annum, payable semi-annually. This plan would make the investment secure, would avoid all question of market influence, and would pay the companies a sum on the investment much nearer that which they could obtain by investing the moneys themselves. These sinking-fund moneys belong to the companies entirely; the United-States bonds having no lien whatever upon the one-half transportation compensation devoted to this purpose, only on the other half, which is, and has been, regularly applied to the payment of the bonds and interest under Act of July 2, 1864 (sect. 5, 13 U. S. Statutes, 359).

In my last annual report, p. 21, it was shown, that, owing to the delays in settlement, large sums due these companies, and payable into the sinking-funds, remained uncredited, and, of course, were unavailable for investment, to the great detriment of their interest account. Excepting compensation for mail

service, it is quite within bounds to say that the average time required for compensation for service to be passed to the credit of the companies, is not less than one year.

In his annual report for 1881, the Commissioner of Railroads says, —

Reports furnished this office by the Treasury Department, show that the amount in the sinking-fund on the 30th of June, 1881, was $1,919,950.26, of which the Central Pacific Company had $1,069,904.62, and the Union Pacific Company $850,045.64. The same statements show the investment of these sinking-funds to have been as follows: —

Character of Bonds.	Union Pacific.	Cent'l Pacific.	Total.
Funded loan of 1881, 6%	$256,450 00	$194,900 00	$451,350 00
Funded loan of 1907, 4%	32,650 00	199,100 00	231,750 00
Currency sixes, 6%	361,000 00	444,000 00	805,000 00
Principal	$650,100 00	$838,000 00	$1,488,100 00
Premium paid	124,065 43	168,727 73	292,793 16
Total cost	$774,165 43	$1,006,727 73	$1,780,893 16

Leaving the amount uninvested on June 30, 1881, as follows: —

Union Pacific	$75,880 21
Central Pacific	63,176 89
Total	$139,057 10

No investment has been made since April 6, 1881.

The companies have repeatedly protested against the heavy cost of these investments. As high as 135 has been paid, as, for instance, $198,000 was invested by the treasurer on April 6, 1881, in currency sixes, premium 35; $76,000 on same date, at premium of 34.95; and $220,000 same date, premium 33.9.

I quote from last year's report of this office (see p. 55).

I renew this recommendation of my predecessor, and agree with him, that it is due to the companies affected by the Act of May 7, 1878, that the Secretary of the Treasury be given authority to credit the amounts covered into the sinking-funds, with interest at 5 or 6 per cent per annum, payable semi-annually; or, I will add, to invest the sinking-funds in either the company's first-mortgage bonds, or such bonds as have been issued to the companies by the United States.

In his report for 1882, under the head of "Condition of the Sinking-Fund Account," the Commissioner says, —

The recommendation is renewed that section 4 of the Act of May 7, 1878, be so amended as to embrace the subsidy portion of the Kansas Division of the Union Pacific Railway, the Central Branch Union Pacific Railroad, and the Sioux City and Pacific Railroad, within the operations of said Act, requiring the establishment of sinking-funds and the payment of "twenty-five per centum of net earnings." The annual requirement as to the Kansas Division should be a sum not less than $300,000; and, as to the two other roads, it is believed that $60,000 each would not be an unreasonable requirement.

Appendix 8 of this report shows in detail the condition of the sinking-funds of the Union and Central Pacific Companies, respectively, held by the Treasurer of the United States, under the Act of Congress approved May 7, 1878, from which it will be seen, that on June 30, 1882, these funds amounted to $2,716,221.68; the Central Pacific having to its credit $1,534,614.26, and the Union Pacific $1,181,607.42.

Investments have been made by the Secretary of the Treasury as follows: —

Character of Bonds.	Union Pacific.	Centr'l Pacific.	Total.
Funded loan of 1881, 6%	$256,450 00	$194,900 00	$451,350 00
Funded loan of 1907, 4%	32,650 00	199,100 00	231,750 00
Currency sixes, 6%	361,000 00	444,000 00	805,000 00
Principal	$650,100 00	$838,000 00	$1,488,100 00
Premium paid	124,065 43	168,727 73	292,793 16
Total cost	$774,165 43	$1,006,727 73	$1,780,893 16

The last investment was made April 6, 1881, at which time a premium as high as 35 per centum was paid; but repeated protests have been made by the companies, against the heavy cost of these investments.

On June 30, 1882, the amounts remaining in the Treasury *uninvested*, were as follows: —

Credit of the Central Pacific	$527,886 53
Credit of the Union Pacific	407,441 99
Total	$935,328 52

On which the above companies are receiving no interest whatever.

The Act of 1878, section 3, requires that the "sinking-fund *shall be* invested by the Secretary of the Treasury in bonds of the United States," and directs that he shall prefer the five per cent bonds. It evidently was not foreseen that the 6, 5, 4½, and 4 per cent bonds might be called in for payment, and converted or extended at 3½, or even 3 per cent; nor was it foreseen that the premium would rise to more than one-third of the entire fund. The last investment was made April 6, 1881, at a premium as high as 35 per cent; and on June 30, last, there remained uninvested, $935,328.52, which amount has since been largely increased. The fund has evidently not accomplished the result anticipated, and since April, 1881, may be regarded as having practically failed for want of suitable investment.

The Supreme Court in the United States *vs.* the Union Pacific Railroad Company (91 U. S. R. 72), has held that the companies "are not required to pay the interest before the maturity of the principal of the bonds."

The fund, therefore, thus paid into the Treasury, is not applied as in ordinary cases, first to the extinguishment of interest, but is credited to the companies, respectively, under the provisions of the Act of 1878, — one-half of the amount of transportation retained, and five per cent of the earnings to the bond and interest account, and the remainder of the twenty-five per cent of net earnings to the sinking-fund — the difference being, that that which is credited on the bond and interest account bears no interest, and that which is invested in the sinking-fund earns for the company the interest of its investment until the maturity of the bonds, when the whole accumulated fund will be

applied toward the payment of the debt. The Government has thus a direct interest in seeing that the fund be made fully productive.

In view of the fact that these companies are being charged with interest on their subsidy bonds at the rate of six per centum per annum, that the investments made by the Secretary of the Treasury yield only about three and a half per centum per annum, and at maturity of the bonds the large premiums paid will be entirely lost to the companies, and that a sum now much exceeding $1,000,000, and constantly increasing, remains uninvested by reason of the limitations of the Act, — in simple justice to them, and in the interest of the Government, I deem it my duty to recommend that sect. 3 of the Act of May 7, 1878, be so amended as to authorize the Secretary of the Treasury to invest the sinking-funds in the first-mortgage bonds of the companies, or such bonds as have been issued to them by the United States, or in other good and sufficient securities; and to convert the bonds, now held by the Treasurer of the United States, in said sinking-funds, into money at the market rates, and reinvest the same in like securities.

As many doubts have been expressed as to the ability of the companies to meet their indebtedness at maturity, and as to the efficiency of the provisions for a sinking-fund, I deem it proper to suggest whether it may not be practicable and highly desirable, with the consent of the companies, to change the form of their indebtedness from a running book-account into a settlement and actual delivery of interest-bearing bonds for the amount found to be due on a convenient day, say July 1, 1883, at which time one-half of the interest will have been paid by the United States. Let the ascertained amount be divided into, say, one hundred semi-annual instalments, each to be represented by a redemption bond, one payable each six months, together with interest upon the whole unpaid remainder of the debt, the lien to remain as it is.

To aid reflection upon this suggestion, I desire to submit some considerations which bear upon it.

The proportion of "net earnings" required to be paid, under the Act of May 7, 1878, is probably as large a proportion of the income of the roads as due regard to their proper maintenance and the interests of the public will permit. It is as well guarded as perhaps any Act could be, yet its practical enforcement is not without difficulty. Not only is the constitutionality of the Act regarded by the companies as still open, but questions of book-keeping, of expenses, of betterments, of new construction, of aided and non-aided portions of the road, of through and local traffic, and of diverted traffic, have all entered into the ascertainment of what are "the whole net earnings of the said railroad company as ascertained and defined as hereinbefore provided."

Again, the Act of March 3, 1873, sect. 2, directs the Secretary of the Treasury "to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States, for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with five per cent of net earnings due, and unapplied, as provided by law." But the same section authorizes any such company to bring suit in the Court of Claims to recover the price of such freight and transportation, and directs the issue to be determined upon the merits of the law and facts, with right of appeal to the Supreme Court.

The several laws touching the security of the advances made by the Government in aid of the roads have been fruitful of litigation.

In United States *vs.* Kansas Pacific Railway Company (99 U. S. R. 455), it was decided that the bonds issued to that company were a lien only on that portion of that company's road in respect to which they were issued, namely, 394 miles, and that only such part of the annual net earnings of the road as was due to those miles is subject to the payment of five per cent. The same construction has been adopted in other cases, and has been extended to exclude from the operations of the Act "net earnings" earned upon non-aided roads, or parts of roads, operated by the companies.

What are "net earnings" under the sinking-fund Act has been contested. The Union Pacific Company has declined to settle on the basis on which this office insists.

The controversy involves items for new construction and equipment for the three and one-half years ending Dec. 31, 1881, to the amount of $2,381,439.-82, twenty-five per cent of which is claimed to be due the Government, and has been included in the payments demanded from the company. The status of the question is as follows:—

In the United States *vs.* the Union Pacific Railroad Company (99 U. S. R. 402), it was held that "net earnings" within the meaning of the law are ascertained by deducting from the gross earnings all the ordinary expenses of organization and of operating the road, and expenditures made *bona fide* in improvements, and paid out of earnings, and not by the issue of bonds or stocks.

In United States *vs.* Kansas Pacific Railway Company (99 U. S. R. 455), the court adheres to the ruling in United States *vs.* Union Pacific Railroad Company (*supra*, p. 402) as to the principle which should govern in determining the amount of "net earnings," and specifically rules, that, in ascertaining net earnings, there should be deducted from gross receipts, provided they were actually paid out of the earnings of the road, and not raised by bond or stock, the equipment account, or replacing and rebuilding rolling-stock, machinery, etc., the amounts paid for depot-grounds, and the expenses of the same, and the construction account, or improvements and additions to the track, etc.

These cases were instituted in the Court of Claims in 1877 (13 Court of Claims, 401), and were decided, upon appeals, by the Supreme Court at the October term, 1878. Although decided upon the statutes prior to the Act of May 7, 1878, the court in the Union Pacific case (p. 427) refer to that Act, but did not pass upon its effect, in ascertaining "net earnings" as therein provided.

The first section of this Act in terms provides "that the net earnings mentioned in the Act of 1862, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively, the necessary expenses actually paid within the year in operating the same, and keeping the same in a state of repair; and also the sum paid by them respectively, within the year, in discharge of interest on their first-mortgage bonds, whose lien has priority of the lien of the United States."

This statute has not received judicial construction as to the method it prescribes of ascertaining "net earnings." Under these circumstances, this office has insisted that expenditures for *new construction* and *new equipment* are not "*necessary expenses actually paid within the year in operating the same, and keeping the same in a state of repair*," and has declined to settle upon any basis which deducts such items from the gross receipts, in ascertaining net earnings.

The Central Pacific, reserving its rights, whatever they may be under the law, has paid, without prejudice, 25 per cent of their net earnings as ascertained without such deduction.

The Union Pacific, insisting upon their right to deduct such items, have declined to pay the balance claimed to be due from them, — viz., $901,837.03, — unless they are allowed to deduct from the gross receipts the sum of $2,381,439.82 for new construction and equipment for the three and one-half years heretofore mentioned, the allowance of which would reduce the amount due under the Act, to $306,477.07.

In accordance with the grounds taken by the company, a check for the balance, shown by their statement to be due to the United States on Dec. 31, 1880, amounting to $69,358.83, was deposited in the sub-treasury at Boston, Mass., on July 26, 1881.

This office felt warranted, from its construction of the Act of May 7, 1878, in advising the Treasury Department not to accept this amount as payment in full of all demands to Dec. 31, 1880, in consequence of which the amount has not been covered into the Treasury, and no further payment has been made or tendered by the company. The question remains open; but it has been agreed to request the Secretary of the Interior to submit the matter to the Attorney-General for his opinion, before whom it will be fully presented as soon as practicable.

The constitutionality of the Act of May 7, 1878, was contested by both companies upon grounds of legislative power to demand from the companies any larger annual payment than that required by the charter Acts of 1862 and 1864. The Act was sustained by a divided court; four of the justices, by whom the case was heard, holding the Act to be within the legislative power, and three joining in a dissenting opinion. (Sinking-fund cases, 99 U. S. R. 700.)

Should the present sinking-fund method be continued, we may venture upon an approximation of its results as follows: —

CENTRAL PACIFIC RAILROAD.		
Principal sum of bonds advanced		$27,855,680 00
Thirty years' interest at six per cent.		50,140,224 00
Total		$77,995,904 00
Deduct transportation, etc., approximately, in round numbers, first fifteen years	$6,000,000	
Deduct transportation, etc., approximately, in round numbers, last fifteen years, at present rates	13,500,000	
By accumulation of sinking-fund for the next fifteen years, estimated at $500,000 per annum, together with amount already in sinking fund at three per cent per annum	12,500,000	32,000,000 00
Balance due the United States at maturity of bonds		$45,995,904 00
UNION PACIFIC RAILWAY.		
Principal of bonds advanced		$27,236,512 00
Thirty years' interest at six per cent.		49,025,721 00
Total		$76,262,233 00
Deduct transportation, etc., approximately, in round numbers, for first fifteen years	$12,000,000	
Deduct transportation, etc., approximately, in round numbers, for last fifteen years, at the present rate	16,500,000	
By accumulation of sinking-fund for the next fifteen years, estimated at $900,000 per annum, together with amount already in sinking-fund, at three per cent per annum	22,500,000	51,000,000 00
Balance due the United States at maturity of bonds		$25,262,233 00

It is manifest, that when the bonds mature, at the close of the present century, the present sinking-fund will not be sufficient to meet them; and if left to be dealt with then as a mere book-account, with the risk of possible diminution of income from the rapidly increasing competition which they must surely encounter, adjustment may be more difficult and embarrassing than now.

The balance unpaid at maturity will be, as nearly as can now be estimated, from the Central Pacific, say, $46,000,000, and from the Union Pacific, say, $25,000,000, — an aggregate of $71,000,000.

If the debt were extended for fifty years, even at present government interest of three per cent per annum, it would require annual payments from the Central Company at first of about $2,200,000, running down at the end to about $947,000; and from the Union Company at first about $1,250,000, running down to about $515,000.

These amounts are approximations only, and would vary somewhat upon close calculation of the value of the debt at any given time, and upon proper commutation of the interest.

It is respectfully submitted that it is worthy of careful consideration whether it would not be wisest and best for Congress now to commute the present mode of payment into one of fixed amounts not dependent upon the fluctuations of net earnings, or the contingencies of competition, which might cause net earnings to disappear.

The Union Pacific and Central Pacific roads and their connections are much the most important railroads with which the Government has to do. It is of the highest importance to devise the best method of securing to the Government the certain reimbursement of its advances, with due regard to the rights and interests of the company, the Government, and the people so largely dependent upon their proper maintenance. In this connection, the original purposes of the Government in aiding their construction, and which are of no less importance now than then, should have due weight.

The necessities under which they originated, and which are so ably expressed by Justice Davis in delivering the opinion of the Court in United States *vs.* Union Pacific Railroad (91 U. S. R. 79), may be recalled with profit. He says, —

"Many of the provisions in the original Act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed. The war of the Rebellion was in progress; and, owing to complications with England, the country had become alarmed for the safety of our Pacific possessions.

"The enterprise was viewed as a national undertaking for a national purpose; and the public mind was directed to the end in view, rather than to the particular means for securing it. Although the road was a military necessity, there were other reasons active at the time in producing an opinion for its completion, besides the protection of an exposed frontier. there was a vast, unpeopled territory lying between the Missouri and Sacramento Rivers, which was practically worthless without the facilities afforded by a railroad for the transportation of persons and property. With its construction, the agricultural and mineral resources of this territory could be developed, settlements made where settlements were possible, and thereby the wealth and power of the United States largely increased; and there was also the

pressing want, in time of peace even, of an improved and cheaper method for the transportation of the mails, and of supplies for the army and the Indians.

"It was in presence of these facts that Congress undertook to deal with the subject of this railroad. The difficulties in the way of building it were great, and by many intelligent persons considered unsurmountable.

"The scheme for building a railroad two thousand miles in length, across mountains, over deserts, and through a country inhabited by Indians, jealous of intrusion upon their rights, was universally regarded at the time as a bold and hazardous undertaking. It is nothing to the purpose that the apprehended difficulties in a great measure disappeared after trial, and that the road was constructed at less cost of time and money than had been considered possible. No argument can be drawn from the wisdom that comes after the fact.

"The project of building the road was not conceived for private ends; and the prevalent opinion was, that it could not be worked out by private capital alone. It was a national work, originating in national necessities, and requiring national assistance. The primary object of the Government was to advance its own interests, and it endeavored to engage individual co-operation as a means to an end, — the securing a road which could be used for its own purposes."

The purposes of Congress in granting the liberal aid extended to these companies, so forcibly expressed by Justice Davis, were held to be important elements in arriving at the true construction of their charters, and are not now to be overlooked in considering their present relations to the Government. All these purposes have been much more than realized; and it has been frequently and officially stated, that the actual saving, year by year, to the Government, greatly exceeds the whole annual interest paid.

But whatever weight these considerations should have in guiding the discretion of Congress, and however much the Government and the country are indebted, as they are, to the vigor and enterprise of the men by whose energy, skill, and perseverance this great national and pioneer work was consummated, this office can take no other cognizance of their affairs than in the simple light of debtor and creditor. And it is in this light only, and with a view to devise the best possible security for the advances made by the Government, that I have ventured to make the suggestions.

First, That if the sinking-fund is to be continued, the discretion of the Secretary of the Treasury should be enlarged as to the investment of the fund.

Second, That Congress consider the practicability of commuting the present book-account indebtedness for securities having the same lien, and of fixed amount, and payable at fixed periods

Under the same head, in his report for 1883, the Commissioner says, —

Appendix 8 of this report gives a detailed statement showing the condition of the sinking-funds of the Union and Central Pacific Companies respectively, held by the Treasurer of the United States under the Act of Congress approved May 7, 1878, from which it will be seen, that on June 30, 1883, these funds amounted to $4,036,713.45; the Central Pacific having to its credit $2,404,015.86, and the Union Pacific $1,632,697.59.

Investments have been made by the Secretary of the Treasury as follows: —

Character of Bonds.	Cent'l Pacific.	Union Pacific.	Total.
Funded loan of 1881, 5%. . . .	$736,700 00	$256,450 00	$993,150 00
Funded loan of 1907, 6%	199,100 00	32,650 00	231,750 00
Currency sixes, 6%.	444,000 00	361,000 00	805,000 00
Principal	$1,379,800 00	$650,100 00	$2,029,900 00
Premium paid	179,563 73	124,065 43	303,629 16
Total cost	$1,559,363 73	$774,165 43	$2,333,529 16

On June 30, 1883, the amounts remaining in the United-States Treasury, *uninvested*, were as follows: —

Credit of the Central Pacific	$844,652 13
Credit of the Union Pacific	858,532 16
Total	$1,703,184 29

That the sinking-fund has not accomplished the result anticipated, is quite evident, and may be regarded as practically a failure for want of suitable investment. The last investment for the Union Pacific was made April 6, 1881, at which time a premium as high as thirty-five per centum was paid; but the company repeatedly protested against such high rates of premium. Reference to the foregoing table will show that the sum of $650,100 has been invested at a cost of $124,065.43, or an average premium of nearly twenty per centum. On June 30, 1882, the amount in the sinking-fund, uninvested, was $407,441.99; and on June 30, 1883, it had increased to $858,532.16. This is a manifest hardship to the company; as the amount should be drawing a fair rate of interest, and correspondingly diminishes the available fund in the hands of the Government.

The last investment for the Central Pacific was made Nov. 27, 1882; the sum of $541,800 having been invested, at a premium of two per centum, in the funded loan of 1881 continued at three and a half per centum. The sum of $1,379,800 has been invested for this company at a cost of $179,563.73. On June 30, 1883, the amount in the sinking-fund, uninvested, was $844,652.13.

Sect. 3 of the Act of May 7, 1878, provides that the "sinking-fund shall be invested by the Secretary of the Treasury in bonds of the United States," and directs that preference be given the five per cent bonds; but it evidently was not foreseen that the six, five, and four per cent bonds might be called in, or extended at a lower rate of interest.

In my report for 1882, p. 12, for reasons there more fully stated, it was recommended, —

"That sect. 3 of the Act of May 7, 1878, be so amended as to authorize the Secretary of the Treasury to invest the sinking-funds in the first-mortgage bonds of the companies, or such bonds as have been issued to them by the United States, or in other good and sufficient securities; and to convert the bonds now held by the Treasurer of the United States in said sinking-funds, into money at the market rates, and re-invest the same in like securities."

This recommendation is respectfully renewed; but it is suggested, that, if the present sinking-fund method is to be continued, it would be a more simple and equitable plan to have all amounts paid by the companies covered into the Treasury, and credited with a certain rate of interest per annum, say 3 per cent, thus avoiding all questions of investments, premiums, etc.

FUNDING THE DEBT.

I again urgently commend to the consideration of Congress the propriety of commuting the present sinking-fund method of payment of the debts of the subsidized railroads, to one of fixed obligations, having the same lien, and of fixed amounts, and payable at fixed periods.

It is of the first importance that the method adopted should be certain in its operation and result, and have due regard to the security of the Government and the rights of the companies.

Although I have discussed this subject at some length in my last report, it is one of such great importance that I deem it proper to restate the argument with additional suggestions.

. . . . . .

I am the more convinced that immediate action should be taken by Congress in this matter, for the reason that each year demonstrates more clearly the fact that the present sinking-fund method is a practical failure; and I invite particular attention to the detailed report on the Central Pacific Railroad Company, from which it will be seen that the earnings on the subsidized portion of the road diminished in greater proportion during the year 1882 than on the non-aided and leased lines. The average decrease on the entire system was $462 per mile; but on the aided portion it was at the rate of $553 per mile, as against $227 on the non-aided portion.

But whether this falling-off of earnings on the subsidized portion of the road is due to the natural changes in traffic incident to the opening of new and competing lines, or has been purposely diverted from one line to another, it works equally to the same result in reducing the gross earnings of the roads, out of which the 25 per cent of the net earnings required to be paid under the Act of May 7, 1878, is to be derived. But from whatever causes the fact arises, it is not perceived how the Government can interpose to change the direction of transportation of either passengers or freights. Such inquiry would be environed with almost insurmountable difficulties of both law and fact.

The gross receipts of the Union Pacific also decreased, but the diminution of operating expenses left the 25 per cent of net earnings slightly increased.

Under the decision of the First Comptroller, affirmed and adopted by the Secretary of the Treasury, in his circular of June 27, 1883, the Government is liable to pay in cash for all services rendered by the bonded Pacific railroads, over any portions of their road owned, leased, or operated, which have not been subsidized in bonds. The total service for the Government rendered by the Union Pacific for the year 1882, over all its lines, was $1,139,709.38, of which $932,975 41 was upon the subsidized portion, leaving the sum of $206,733.97 as due the company in cash. The Central Pacific rendered service during the same period, amounting to $1,051,862.46, of which $403,734.26 was upon the subsidized line, leaving $648,108.20 as due the company in cash. The services of the Sioux City and Pacific amounted to $30,888.22, of which $10,231.05

was upon the subsidized portion, leaving $20,657.17 as due the company in cash. The Central Branch Union Pacific performed services amounting to $35,287.42, of which $12,538.58 was on the subsidized portion, leaving $22,748.84 as due the company in cash.

It is clear that under this decision, which is in accord with the decision of the Court of Claims in Union Pacific Railway Company *vs.* United States (16 Court of Claims, 353), the companies have a manifest interest in diverting traffic from the subsidized portions of the road. But if they accept the provisions of a bill which funds the indebtedness in long payments, and directs that all moneys for services over the aided lines, or upon any lines owned, leased, or operated by them, be credited upon the books of the Treasury until the bond of redemption next to mature shall have been fully paid, the entire transportation of the Government over all these roads would be pledged and applied to the liquidation of the debt as it matures, and insure its absolute payment within the limited time.

Should the decrease in the earnings of the aided lines continue to even an approximate proportion to the decrease of the last year, it will be readily perceived that the 25 per cent of net earnings to which the Government is entitled would be so reduced as to render this increasingly inadequate as related to the vast magnitude of the debt.

At the rate provided for in the Thurman Act, it would require a century or more to accumulate a fund sufficient to discharge this debt, and with strong probability that by this method it cannot be done. Nor would it be practicable to increase the percentage without manifest detriment, as well to the companies as their patrons. The payment, by whatever mode it be collected, must come from the earnings of the road. If the rates be too high, the burden falls with onerous weight upon the business, and would work directly in the interest of non-aided competing lines.

It would seem to be of less consequence whether the debt be paid in fifty or sixty, or even a hundred, years, if its ultimate payment be absolutely assured, than that oppressive burdens be imposed upon the commerce between the Atlantic and Pacific coasts. A proper net compensation must remain to the owners of the roads, if they are to receive the watchful care and necessary maintenance which safety and success demand.

The construction of these roads has been pronounced by the Supreme Court of the United States to have been a national necessity, so urgent as to admit of no delay, and confessedly involving the integrity of the Union. The energy with which they were built is well illustrated in the fact that they were completed within seven years less time than the limit established by law, and at a time when the currency bonds issued to the companies realized an average of only about 75 per cent in gold. And they must be repaid at par.

It was doubtless expected that the compensation for Government transportation would equal the current interest; that it has not, has been a disappointment as well to the companies as to the Government: but, had the charges for transportation continued at the rate prior to their construction, it would greatly have exceeded the interest.

The Government has the advantage, and is entitled to it, of the reduced expenses of transportation which has resulted from their construction: and in this view, the saving to the Government has greatly exceeded the current interest it has paid. It is also fairly to be considered, that the national purposes have all been more than realized in the increased sales of public lands,

the extension of civilization, the suppression of Indian wars, and the consequent great diminution of expenses, the establishment of States, and the strengthening of the ties which have bound the States of the Pacific coast indissolubly to the Union.

All these considerations appeal with great force to the liberality of Congress; but, whatever weight they may have in guiding their discretion, this office can regard the question only in the light of the best method of securing the certain payment of this vast and constantly increasing debt, and the payment of which, if left to the present methods, is at least doubtful. Upon full consideration of the whole subject, I am strengthened in the convictions expressed in my report for 1882, that the interests of the Government will be best promoted by commuting the present uncertain and variable book-account payments into bonded payments of fixed amounts. It would seem to be judicious, that, if such measure be adopted, the Act should provide that the largest payments should be made first, whilst the responsibility of the company is known, and by constant and fixed diminution of the debt so reduce the deferred payments that they will not be endangered by any contingencies of the future.

I therefore renew the recommendation —

First, That, if the sinking-fund is to be continued, the discretion of the Secretary of the Treasury should be enlarged as to the investment of the fund.

Second, That Congress consider the practicability of commuting the present book-account indebtedness for securities having the same lien, and of fixed amount, and payable at fixed periods.

In his report for 1884 he says, —

I again invite attention to the inadequacy of the present sinking-fund method of securing payment from the bonded railroads of their large and rapidly increasing indebtedness.

Experience has fully demonstrated that the Act of May 7, 1878, for reasons which could not be anticipated when it was passed, has failed to realize the expectations upon which it was based; and it has become increasingly plain, that it is inadequate to secure the payment of the debt. In my judgment, it is clear that the Government will be best protected by a reasonable extension of time, and by funding the whole remaining debt and interest in obligations of fixed amounts and maturity.

Such extension should be coupled with a provision which shall require the companies to pledge, for the payment of each maturing instalment, all earnings for Government service over all lines, aided and non-aided, owned, leased, or operated by such companies respectively.

Any Act of Congress purporting to withhold such earnings over non-aided lines, or portions of lines, would be clearly unconstitutional, and could be effective only with the consent of the companies.

In my report for last year, p. 15, I recommended that Congress consider the practicability of funding the debt, and called attention to the fact, that under the decision of the First Comptroller, affirmed and adopted by the Secretary of the Treasury in his circular of June 27, 1883, the Government is liable to pay in cash for all services rendered by the bonded Pacific railroads over any portions of their roads owned, leased, or operated which have not been subsidized in bonds. I added, "It is clear that under this decision, which is in accord with the decision of the Court of Claims (U. P. R.R. *vs.* U. S., 16 Court

of Claims, 353), the companies have a manifest interest in diverting traffic from the subsidized portions of the roads." I also called attention to the detailed statement of the Central Pacific Railroad Company, and to the fact that the earnings on the subsidized portion of the road diminished in greater proportion during the year 1882 than on the non-aided portion. Comparison of the statement on p. 43 of my report for 1883, with that on p. 43 of this report, will show the net earnings of 1882 on the aided portion to have been $3,171,680.95, and for 1883 $2,646,122.76, a decrease of $525,558.19, or $131,389.55 of the proportion of such earnings due the Government.

The Central Pacific system, in connection with the Galveston, Harrisburg, and San Antonio system, embraces a line from Ogden, Utah, by way of San Francisco to New Orleans, a distance from Ogden to San Francisco of 895 miles, from San Francisco to El Paso of 1,286 miles, and from El Paso, over the Galveston, Harrisburg, and San Antonio system, to New Orleans, of 1,209 miles, a total distance of 3,390 miles, exclusive of 915 miles of auxiliary roads, and 490 miles of steamer-lines. Of this total mileage, only 860.66 miles are subsidized with bonds, and are under the operation of the Act of May 7, 1878.

The figures for the year 1883 show still more strikingly the decrease of earnings per mile on the subsidized portion of this system. The comparative statement of earnings and expenses on p. 40 of this report shows, that, while there was an average decrease of earnings per mile on the whole system in 1882 of $462 35, the decrease on the non-aided portion was only $227.47 per mile as against $553 26 on the aided portion. During the year 1883 the average decrease per mile on the whole system was $183 30, but the earnings on the non-aided portion *increased* $57.62 per mile, while there was a *decrease* on the aided portion of $855.63 per mile.

These figures clearly exhibit the grave uncertainties which must be encountered in any plan which makes the payment of this vast debt depend upon a mere percentage of net earnings. This contrasted decrease is doubtless to be largely attributed to the natural diversion of traffic from the subsidized portions of the line, which lie wholly north and east of San Francisco, consequent upon the opening of new and competing lines through a territory whose traffic before the opening of the Southern Pacific and the Atlantic and Pacific roads was necessarily limited to the Central Pacific, but a large part of which is naturally tributary to the newer lines, and which mainly induced their construction.

For all foreign freights, the Atlantic seaports are the objective point.

	Miles.
From San Francisco to New York, *via* the Central and Union Pacific	3,334
From San Francisco to New York, *via* Atlantic and Pacific	3,458
From Los Angeles to New York, *via* Atlantic and Pacific	3,176
From San Francisco to New Orleans, *via* Southern Pacific	2,495
From San Francisco to Galveston, *via* Southern Pacific	2,184
From Los Angeles to New Orleans, *via* Southern Pacific	2,014

It will thus be seen that the Atlantic and Pacific has opened a very formidable competition to New York from San Francisco and all points to the south of it; and that the Southern Pacific, on its line to New Orleans and Galveston, has opened to the whole of California, even to its northernmost extremity, the shortest present line to the Atlantic ports. The point on the Central Pacific of equal distance between New York and New Orleans, at which, other things being equal, the traffic destined for foreign exportation would seek the New

York or New Orleans terminus, would be about 419 miles east of San Francisco.

The Union Pacific is now subjected to the competition in the territory south of its line, of the Chicago, Burlington, and Quincy, and the Denver and Rio Grande roads, which parallel it through its whole length, from its eastern terminus to Ogden. It is also threatened with a no less formidable competition in the near future by the construction of a line, through the territory north of it, in the interest of the Chicago and North-Western, upon a line, partially surveyed beyond the terminus at Valentine, of the Fremont, Elkhorn, and Missouri Valley Railroad Company, of which 293 miles west of the Missouri River are already constructed, and which, when completed, will open a line of easy grade and construction again parallel to this road through its entire length.

By reference to the statements on pp. 14 and 15 of this report, it will be seen that up to July 1, 1884, the United States has paid $63,090,504.18 as interest on the subsidy bonds; while the total credits of the several companies on the interest account, as shown by the Treasury statement, were $18,804,122.28, leaving an unpaid balance of $44,285,381.90. This, added to the principal sum of the bonds, $64,623,512, makes $108,918,893.90. Deduct from this sum $6,084,099.82, the amount now in the *sinking-fund*, and there remains a balance of $102,834,794.08, the amount of their indebtedness July 1, 1884, none of which is due until the maturity of the bonds.

The annual interest paid by the United States on these bonds is $3,877,410.72. The total average annual repayment by the companies, thus far, has been $2,266,624.79, showing an average annual increase of the debt of $1,610,785.93.

Of the $2,266,624.79, the average annual payment, $1,013,016.64, is carried to the sinking-fund; and only $1,253,608.15 is carried to the interest account. The United States, therefore, advances annually for interest an average of $2,623,802.57 in excess of the annual repayments of interest by the companies.

The first-mortgage bonds of these companies, respectively, are equal in amount to the subsidy bonds issued by the Government, and mature about the same time. They are secured by the mortgage pledge, not only of all the property of the companies respectively, but of their "corporate rights, privileges, and franchise." Foreclosure would pass the title to the purchaser discharged from the government lien, and exempt from all legislative interference based upon the existing subsidy debt.

By sect. 10 of the Act of 1864, they have priority of lien over the Government.

By sect. 8 of the Act of May 7, 1878, the sinking-fund created by that Act "shall be held for the protection, security, and benefit of the lawful and just holders of any mortgage or indebtedness of such companies respectively, lawfully paramount to the rights of the United States."

The continuation of the sinking-fund method is, therefore, to accumulate a fund, which, in the possible insolvency of any of these companies, will stand for the benefit of the first-mortgage creditors, and must be paid to them should the foreclosure of the first mortgage for any reason fail to realize the debt thus secured.

The relation of the Government to the debts of these railroads is shown by the following tables: —

The first-mortgage debts, at their maturity, assuming that the interest in the mean time will be paid, and all of which has priority over the subsidy lien, will be as follows: —

Central Pacific	$27,855,000
Union Pacific	27,229,000
Kansas Pacific	6,303,000
Sioux City and Pacific	1,628,000
Central Branch Union Pacific	1,600,000
	$64,613,000

The subsidy debt to the United States was, on the 30th of June, 1884, $102,834,794.08, and at the maturity of the subsidy bonds (say 1898) will be about $128,500,000, allowing to the companies the average of past annual credits, and assuming the average increase to be, as in the past, about $1,600,000 per year. In other words, the total indebtedness at maturity will closely approximate $193,000,000, including both the first mortgage and subsidy debts.

It necessarily follows, that if the Government, as a second-mortgage creditor, would protect its debt in the event of the foreclosure of the first mortgage, it must bid to an amount sufficient to cover both, or about $193,000,000, a sum vastly in excess, and probably twice as much, as the same property would now cost to construct.

Should the property be sold to any purchaser other than the Government for a sum less than enough to cover both these debts, the Government must lose the difference. If sold to the Government, it must pay in cash the whole first mortgage, amounting to about $64,613,000, and become the owner, contrary to any policy of the Government which has hitherto obtained, and operate them in the face of all the competition of parallel and rival roads which they must necessarily encounter. Nor is there any probability that the Government could reimburse its outlay by any resale.

Should the debt be funded as proposed, each semi-annual payment would be so nearly, or possibly quite, paid by the current earnings for government transportation, — if with the consent of the companies the *whole* may be so applied, — that the balance, if any, could be easily paid out of the general earnings; and, under such circumstances, it would be clearly in the interest of the companies to pay.

In my annual report for 1882, I called attention to the unsatisfactory working of the present system. I said, p. 15, —

"It is manifest, that when the bonds mature, at the close of the present century, the present sinking-fund will not be sufficient to meet them; and if left to be dealt with then as a mere book-account, with the risk of possible diminution of income from the rapidly increasing competition which they must surely encounter, adjustment may then be more difficult and embarrassing than now. . . .

"It is respectfully submitted that it is worthy of careful consideration, whether it would not be wisest and best for Congress now to commute the present mode of payment into one of fixed amounts, not dependent upon the fluctuations of net earnings, or the contingencies of competition, which might cause net earnings to disappear."

In my report for 1883, pp. 13-16, I again called attention to the subject. Without repeating that discussion, I may quote my opinion as then expressed, that —

"At the rate provided for in the Thurman Act, it would require a century or more to accumulate a fund sufficient to discharge this debt, and with strong probability that by this method it cannot be done. Nor would it be practicable

to increase the percentage without manifest detriment, as well to the companies as their patrons. The payment, by whatever mode it be collected, must come from the earnings of the road. If the rates be too high, the burden falls with onerous weight upon the business, and would work directly in the interest of non-aided competing lines."

Reflection has strengthened my conviction of the wisdom of the change I have suggested. The results of the past year, and of preceding years, clearly exhibit the grave uncertainties which must be encountered in any system which makes the payment of this vast debt depend upon a mere percentage of net earnings. The question, so far as the duties of this office is concerned, is only that of debtor and creditor: any other considerations belong solely to the discretion of Congress. I am solicitous only to secure for the Government the surest and speediest possible payment. It is a question to be determined only on business principles; and it has seemed to me that any private creditor with a debtor similarly situated would gladly extend the time, if thereby additional and valuable security could be obtained. I believe the method proposed would give certainty for uncertainty, and, by increasing the security of the Government, render the ultimate payment of both the debt and interest entirely certain.

D.

THE SIXTY-YEARS' FUNDING-BILL.

In introducing the following bill, Senator Hoar said, —

The bill contains the provisions of a bill which has been popularly called the funding-bill, dealing with the question of proper and further security for the debt due from the subsidized Pacific Railroads, with several amendments and changes which have been suggested by experience to senators while that bill has been upon the calendar. That bill stands as the order of business which I suppose would be next taken up in course, except the appropriation bills and the silver bill; but that statement indicates that it is very unlikely that it can be considered at the present session of the Senate. It is a matter which deserves, and undoubtedly would receive, great attention and considerable discussion. I think, therefore, that it would be useless to have this bill referred to the Committee on the Judiciary, and I introduce it for the information of the public. I hope, that, before the first session of the next Congress, this matter will receive full attention from the business men of the country, so that any suggestion as to its justice or injustice which they see fit to make may reach Congress. I move that the bill be printed, and lie on the table.

A BILL

To amend an Act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an Act approved July second, eighteen hundred and sixty-four, and also an Act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned Act; and to provide for a settlement of the claims growing out of the issue of bonds to aid in the construction

of certain of said railroads, and to secure to the United States the payment of all indebtedness of certain of the companies therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amount of the respective indebtedness of the Union Pacific Railroad Company, the Kansas Pacific Railroad Company, the Central Branch Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, the Central Pacific Railroad Company, and the Western Pacific Railroad Company, to which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific Railroads and branches, as of the first day of April, eighteen hundred and eighty-six, upon the same principle as if the whole sum of said bonds and interest paid and to be paid by the United States thereon, and not theretofore repaid by credits on account thereof, were to be paid to the United States in cash on said day. And the said sums shall be computed and ascertained as follows: —

First, From the sums which shall on the said first day of April, eighteen hundred and eighty-six, have accrued as interest paid or payable down to that day by the United States on said bonds, and not already reimbursed to the United States, there shall be deducted the amounts in the sinking-fund properly applicable to the respective companies, computing the value of any bonds in such sinking-funds at their market value at the time of such computation, as estimated by the Secretary of the Treasury.

Second, The balance remaining shall be added to the sum of the principal of said bonds attributable, respectively, to the Central Pacific Railroad Company, the said Union Pacific Railway Company, the Central Branch Union Pacific Railroad Company, and the Sioux City and Pacific Railroad Company, in the settlement hereinafter provided for.

Third, And there shall be also added to said principal sums the amount of the interest yet to accrue and be paid by the United States on said bonds, so as to ascertain the total sums that would be due to the United States for principal and interest paid on said bonds at their maturity if no further payment or reimbursement were in any wise made by any of said companies in respect thereto after said first day of April, eighteen hundred and eighty-six.

Fourth, The present worth as of said last-named day of said total sums shall then be computed, without compounding, on the basis that money is worth three per centum interest per annum. And the final sums so computed and ascertained shall be deemed the sums that would be paid in cash on said first day of April, eighteen hundred and eighty-six, by said companies, if payment in cash were to be made.

SEC. 2. That the Union Pacific Railway Company, successor to the Union Pacific Railroad Company, and the Kansas Pacific Railway Company, the said Central Pacific Railroad Company, the said Central Branch Union Pacific Railroad Company, and the Sioux City and Pacific Railroad Company, be, and they hereby are, authorized to make, issue, and deliver to the Secretary of the Treasury, who is hereby authorized and directed to receive the same, each its one hundred and twenty several bonds of redemption, each bearing date the first day of April, anno Domini eighteen hundred and eighty-six, one of which bonds shall mature on the first day of October, anno Domini eighteen hundred and eighty-six, and one thereafter at the expiration of each successive period of six months from that date; and that each of such bonds shall be for the

same sum, which sum shall be ascertained by adding to the balance of said indebtedness, computed and ascertained as in section one of this Act is provided, interest at the rate of three per centum per annum from said first day of April to the average date of the maturity of said bonds, and dividing such aggregate amount by one hundred and twenty; that is to say, the Central Pacific shall issue its bonds for the debt due by it to the United States and also the debt due by the Western Pacific to the United States, and the Union Pacific shall issue its bonds for its debts due the United States and also the debt of the Kansas Pacific, and the Central Branch Union Pacific shall issue its bonds for its debt due the United States, and the Sioux City and Pacific Railroad shall issue its bonds for its debt due the United States. The said bonds shall be payable in lawful money of the United States; and each of said bonds, respectively, when paid, shall be thereupon cancelled and surrendered to said company. Said bonds of redemption shall be received by and on behalf of the United States in provisional payment of the bonds so issued by the United States to said companies mentioned in section one of this Act: *Provided, however*, That no money shall be paid to the said several companies, or any of them, or any of their successors or assigns, from the United-States Treasury, for or on account of services rendered to the United States, or any Department of the Government thereof, over or upon the said railroad and telegraph line so aided by the advances of subsidy bonds, or upon any railroad or telegraph line owned, leased, or operated by said company, until the bond next maturing shall be fully paid as herein provided; but the obligation to pay said bonds so to be executed to the United States by said companies, and the obligation of the United States to pay for services, shall be deemed otherwise independent.

SEC. 3. That the statutory lien and security created and subsisting under and by virtue of the Act of Congress approved July first, eighteen hundred and sixty-two, and the Act of July second, eighteen hundred and sixty-four, and the Act of May seventh, eighteen hundred and seventy-eight, to secure the repayment of said subsidy bonds, and the interest thereon, including and together with the whole line of all of the said railroad companies, and also any railroad owned by them, wherever the same may be situated, and all their telegraph lines, their rolling-stock, fixtures, and property of every kind and description forming a part of the operating property of said companies, as well as that which they, their successors or assigns, may hereafter acquire, shall be and remain as security for the payment of the bonds of redemption herein authorized until the same are fully paid: *Provided, however*, That said Central Pacific, and Union Pacific, and Central Branch Union Pacific, and Sioux City and Pacific Railroad Companies, respectively, or their successors as aforesaid, shall be entitled at any time to prepay or anticipate the payment and discharge of said bonds of redemption so held in the United-States Treasury; and to that end it shall be lawful for said companies, their successors or assigns, respectively, to make, issue, and dispose of their bonds to an aggregate not exceeding the amount of their said respective bonds of redemption which may remain then outstanding and unpaid, together with the amount of the first-mortgage bonds of said companies outstanding, to bear such rate of interest, and to run for such term, as may be deemed most expedient, and to secure the same by mortgages upon their respective railroads, telegraph, equipment, franchises, and property, said bonds and mortgages to be subject and subordinate to said lien and security of the United States until the same

shall be extinguished; and upon such payment of all said bonds to the United States the said statutory lien and security in favor of the United States shall thereupon cease and be of no effect; but the duty of each and every of said companies, respectively, and their successors and assigns, to obey and perform all the requirements of law in all other respects, shall continue to exist; and upon any anticipated payment of said bonds of redemption the Secretary of the Treasury is hereby authorized and directed to abate from said bonds interest on the amount thereof, from and after the date of such payment to the maturity thereof, at the rate of three per centum per annum; and whatever mortgages any of said companies may execute in pursuance of the provisions of this section shall be made in all things in strict conformity to the laws of the States or the Territories in which the property mortgaged is situate; and that in respect of all the property that exists in any State or Territory, the security of the United States shall be made by a mortgage or other suitable conveyance of such form, tenor, and effect as shall make the security a valid and legal one under the law of such State or Territory: *Provided*, That neither of said companies shall use or dispose of any of its property or assets, otherwise than in the ordinary and proper course of its current business, without the consent of the President of the United States first obtained: *And provided further*, That no dividends shall be paid by any of said companies unless the same shall have been actually earned, nor unless such company shall have paid to the United States the amount of all matured indebtedness then due and payable under this Act, and shall also have paid all debts which have previously matured which are secured by a lien paramount to that of the United States: *And provided further*, That every disposition of any stocks, bonds, or other securities of other corporations now owned by either of said companies, whether by sale, pledge, or otherwise, shall be reported to the Secretary of the Interior by the company making the same within thirty days after such disposition has been made.

SEC. 4. That so long as each and every of said companies shall keep their said railroads and telegraph lines in proper repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, munitions of war, and supplies of public stores, upon said railroads, for the Government or any Department thereof, whenever required to do so (at fair and reasonable rates of compensation, not to exceed the lowest rates paid by any private party for the same kind of service, and subject to, and bound by, the provisions of any Act of Congress, and the authority exercised thereunder, relating to postal, military, or any other Government transportation), and shall give the Government preference in the use of the same for all the purposes aforesaid, as mentioned in the sixth section of the Act of July first, eighteen hundred and sixty-two, and all Acts amendatory of said Act, and shall make punctual payment of the said bonds of redemption, no other or further sums shall be demanded or required of the company so performing said service and complying with this Act; and none of the penalties or liabilities provided for in said Acts, or any of them, shall be incurred by, or enforced upon, said companies while such due performance of all duties and punctual payments shall continue, but all such payments, requirements, penalties, and liabilities shall be suspended, and not deemed to be due or payable, owing or incurred, until default of some of the provisions of the Acts relating to, and in force respecting, said companies, or of this Act, shall be made, in which case they shall stand revived, and continue in force, in the same manner, and

to the same extent, as if this Act had not been passed. Each of said companies shall also in each year expend whatever sums are necessary to maintain its railroad, rolling-stock, equipments, and operating property of every description in as good condition as the same now are, and in all respects in proper condition to do the business of such company.

SECT. 5. That the acceptance of this Act shall be deemed and held to be an acceptance of the Act approved May seventh, eighteen hundred and seventy-eight, entitled "An Act to alter and amend the Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the Act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-mentioned Act"

SECT. 6. That a failure for six months to pay any of said redemption bonds as the same shall become due and payable as hereinbefore provided, shall, at the option of Congress or of the President of the United States, be deemed, taken, and held to make all the said bonds due and payable; and all the rights and securities of the United States may be thereupon enforced.

SECT. 7. That this Act shall take effect, as to the said companies and their branches, respectively, as hereinbefore described, upon their acceptance by their boards of directors, and under their corporate seals, signed by their presidents, and countersigned by their secretaries, respectively, being filed or deposited with the Secretary of the Treasury within three months from the passage of this Act; but if such acceptance be not so filed, said companies shall take no benefit therefrom. Upon said acceptance being filed, and the settlement in this Act provided for being completed, the Secretary of the Treasury is authorized and directed to sell any securities held in the sinking-fund for said companies; any excess realized from such sale above the value of said securities, as estimated under the first section of this Act, to be credited to the company to whose sinking-fund said securities belonged, as a payment upon its next maturing bond of redemption, and any deficiency below such value to be paid by said company upon demand made by the Secretary of the Treasury after such sale. And said settlement shall be completed on or before the first day of October, anno Domini eighteen hundred and eighty-six.

SECT. 8. That the Secretary of the Treasury is hereby authorized and directed to require either of said companies to pay, out of any balance of net income left in any year after the requirements of this Act have been complied with, and after the payment of such sums as are required for the maintenance and improvement of such company's railroads, equipments, and appurtenances, and of dividends not exceeding six per centum per annum on the capital stock of such company, such sum of money, not exceeding ten per centum of such balance of net income, as he may think proper; the moneys so paid, together with all accumulations thereon, to be invested by him as in section ten of this Act is provided, and to be held by him as a sinking-fund as additional security for the payment of such company's bonds of redemption.

SECT. 9. That if said companies shall fail to accept the foregoing provisions of this Act, or if said settlement shall fail to be completed as and within the time in this Act provided, there shall be charged and collected from such company or companies, their successors and assigns, so failing, from and after the

first day of July, eighteen hundred and eighty-six, forty per centum of their annual net earnings, to be ascertained as provided in section one of the Act of May seventh, eighteen hundred and seventy-eight, in lieu of the twenty-five per centum provided for in said Act; and to that end said Act of May seventh, eighteen hundred and seventy-eight, commonly called the "sinking-fund Act," and any and all amendments or modifications thereof, be, and the same are hereby, extended to the Kansas Pacific Railway Company, to the Sioux City and Pacific Railroad Company, and to the Central Branch Union Pacific Railroad Company; and said Act, and all amendments or modifications thereof, shall henceforth apply to said corporations equally as to those specifically named in said Act.

SECT. 10. That in the event of the non-acceptance of the provisions of this Act by said companies, or in the event of the failure to complete the settlement hereinbefore provided for in this Act, it is further provided that section three of said Act of May seventh, eighteen hundred and seventy-eight, be, and the same hereby is, so amended as to allow the Secretary of the Treasury to invest in the sinking-funds of said companies, in the first-mortgage bonds of said companies, or any bonds or securities of the United States, in his discretion; or he may, with the assent of the companies, apply the same to the extinguishment of the interest of the subsidy bonds, the Government to refund the same on demand at any time, if at any time it becomes necessary in order to meet any debts or obligations of the said corporations prior in lien to said interest.

SECT. 11. That nothing in this Act contained shall operate to discharge, extinguish, diminish, or affect the rights of the United States in the property now belonging to, or hereafter to be acquired by, either of said companies, as against any person or corporation who may have acquired, or shall hereafter acquire, rights in the same subsequent and subject to the rights of the United States, or in any way diminish or affect the rights, if any, of such person or corporation to redeem such property, or be substituted thereto on paying the debt due to the United States.

SECT. 12. That it shall be the duty of the Attorney-General to cause the provisions of this Act to be enforced, and he shall take all steps needful to that end, and shall make report to the President each year or oftener thereon, which report shall be laid before Congress. And until the settlement in this Act provided for shall be completed, all existing provisions of law relating to said companies, respectively, shall remain in force; and on and after said first day of October, eighteen hundred and eighty-six, sections eight and nine of this Act shall, if said settlement fail to be completed, take effect.

SECT. 13. That this Act shall be deemed and taken to be a public Act to all intents and purposes, and shall be subject to alteration, amendment, or repeal, as, in the judgment of Congress, the public good may require.